2026:HHC:1260

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO No.: 977 of 2024
Reserved on : 31.12.2025
Decided on : 06.01.2026

Diwakar Dev Sharma & Ors. ...Petitioners

Versus

State of Himachal Pradesh & Ors. ...Respondents

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?[1] *Yes.*

For the petitioners : Mr. Ashwani Kaundal, Advocate, vice Mr. Naresh K. Sharma, Advocate.

For the respondents : Mr. Mohinder Zharaick, Additional Advocate General, for respondent No. 1-State.

Mr. V.B. Verma, Central Govt. Counsel, for respondents No. 2 and 3.

Virender Singh, Judge

The petitioners have filed this petition, under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS'), with a prayer to quash case bearing Crime No. 90 dated 28.11.2021, under

[1] *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

Sections 145, 146, 147 & 174 of the Railway Act, registered with Railway Police Station Shimla, District Shimla, H.P., as well as, the resultant proceedings thereto, pending in the Court of learned Additional Chief Judicial Magistate, Court No. 1, Shimla, District Shimla, H.P. (hereinafter referred to as the 'trial Court'), in case titled as "State of H.P. Vs Diwakar Dev Sharma & Ors."

2. According to the petitioners, respondent No. 2, Railway Police Station Shimla, District Shimla, H.P. has registered the said false and frivolous complaint, at the instance of respondent No. 3. Elaborating their stand, the petitioners have pleaded that Railway Police, in order to evacuate the local residents, from the place of incident, has also lodged FIR No. 08/2021, dated 28.11.2021, under Sections 341, 147, 149 of the Indian Penal Code and under Section 174 of the Railway Act, 1989, with Railway Police Station Shimla, for the same offence against the petitioners. In the said FIR, there was no complaint of any damage to public property, as well as, personal property.

3. It is the further case of the petitioners that due to the lapse of Railway Authorities, one person died, as his leg was crushed under train. The Railway Authorities have not taken any timely action to save the said person. Thereafter, the local residents made a genuine representation in a peaceful manner and the said agitation was called off on the assurance of local authorities.

4. It is their specific case that during the said gathering, there was no violence or damage to the public, as well as, personal property.

5. It is their further case that in the year 2017, petitioner No. 1, on behalf of entire habitants of the Ward, filed CWPIL No. 26/2019, which is still pending before this Court, with a prayer to provide access for ambulance road/ railway over bridge facilities to the general public, whereas, in the year 2020, railway authorities fixed/erected the iron poles on the path, which was used by the general public. Due to this fact, the local inhabitants raised their grievances on 01.10.2020.

6. Consequently, a meeting was fixed on 07.10.2020, but, the meeting was held on 08.10.2020, in

which, railway authorities have assured to provide the railway over bridge facilities, however, the railway authorities have not taken any action, even after considerable time. Thereafter, the unfortunate incident had taken place on 28.11.2021, when one person died.

7. The relief of quashing has also been sought on the ground that FIR No. 8 of 2021, dated 28.11.2021, has already been quashed by this Court by passing the judgment in Cr. MMO No. 902/2022, titled as "Diwakar Dev Sharma & Ors. Vs Government Railway Police Station & Anr."

8. It is their specific case that Crime No. 90 of 2021, dated 28.11.2021, is nothing, but the repetitive version of FIR No. 08 of 2021.

9. According to the petitioners, the complaint filed by the railway authorities bearing Case Crime No. 90 of 2021, dated 28.11.2021, is the double jeopardy, as the earlier FIR No. 8/2021, dated 28.11.2021, has already been quashed by this Court.

10. On the basis of above facts, a prayer has been made to allow the petition, as prayed for.

11. When, put to notice, respondent No. 1 has filed the reply, disclosing therein, that on 28.11.2021, at about 10:55 am, around 250 persons gathered and obstructed the movement of the train No. 52456 DN H. Queen SML-KLK EXP, as such, inconvenience has been caused to the travellers. The mob including petitioner No. 1, sat on the railway track and obstructed the railway traffic, for 3½ hours. As such, appropriate action be taken in accordance with law.

12. It has been admitted that FIR No. 08/2021, dated 28.11.2021, has already been quashed by this Court, vide judgment dated 26.04.2023, passed in Cr. MMO No. 902 of 2022.

13. Respondents No. 2 and 3, have also taken the similar stand. Factual position with regard to the filing of Cr. MMO No. 902/2022, by virtue of which, the FIR No. 08 of 2021, has been quashed, has also been admitted by respondents No. 2 and 3. In addition to this, a plea has also been taken that petitioners are not entitled for protection, as prayed, under Article 20(2) of the

Constitution of India, as the said principle does not apply to the case registered by RPF, against the petitioners.

14. The petitioners are before this Court under Section 528 of BNSS, with a prayer to quash the Case Crime No. 90, dated 28.11.2021, registered with Railway Police Station Shimla, along with the resultant proceedings thereto, which are stated to be pending before the learned trial Court.

15. The jurisdiction of this Court under Section 482 Cr.P.C. (528 of BNSS), has elaborately been discussed by the Hon'ble Apex Court in the year 1992, in the case titled as ***State of Haryana*** Vs. ***Chaudhary Bhajan Lal & Others***, reported as ***1992 CrLJ, 527***, in which, the Hon'ble Supreme Court has formulated the guidelines for exercising the powers under Section 482 Cr.P.C. Relevant paragraph 107 of the judgment is reproduced, as under:-

> *"107. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be*

exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the FIR. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate with the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the FLR do not constitute a cognizable offence but constitute only. a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the

> *concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
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> *7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

16. This view has again been reiterated by a three Judge Bench of the Hon'ble Supreme Court in ***Neeharika Infrastructure Pvt. Ltd***. Versus ***State of Maharashtra & Others***, reported as ***2021 SCC Online SC 315***. Relevant paragraph 38 of the judgment is reproduced, as under:-

> *38. In the case of Golconda Lingaswamy (supra), after considering the decisions of this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra) and other decisions on the exercise of inherent powers by the High Court under Section 482 Cr.P.C., in paragraphs 5, 7 and 8, it is observed and held as under:*
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> > *"5. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely: (i) to*

give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alique concedit, conceditur et id sine quo res ipsa esse non potest (when the law gives a person anything, it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and

prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.....

8. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892] and Raghubir Saran (Dr.) v. State of Bihar [AIR 1964 SC 1 : (1964) 1 Cri LJ 1] .] It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognisance has been taken by the Magistrate, it is open to the High Court to

> *quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint/FIR has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the FIR that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/FIR is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding."*

17. It is no longer *res integra* that at the time of deciding the petition, under Section 482 Cr.PC (Section 528 of BNSS), this Court cannot assume the powers of the appellate/revisional Court, nor, this Court can act as trial Court. While holding so, the view of this Court is being guided by the decision of Hon'ble Supreme Court in ***Chilakamarthi Venkateswarlu & Another versus State of Andhra Pradesh & Another***, reported as ***(2019) 10***

SCALE 239. Relevant paragraph 15 of the judgment is reproduced, as under:-

> *"15. In exercising jurisdiction under Section 482 it is not permissible for the Court to act as if it were a trial Court. The Court is only to be prima facie satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate materials and documents on record, but it cannot appreciate the evidence to conclude whether the materials produced are sufficient or not for convicting the accused."*

18. Similar view has also been taken by the Hon'ble Supreme Court in ***S.W. Palanitkar & Others versus State of Bihar & Another,*** reported as ***(2002) 1 Supreme Court Cases 241***.

19. In view of the above, now, this Court would proceed further to determine the fact whether the documentary evidence produced by the petitioners can be taken into consideration.

20. The petitioners have annexed the copy of the complaint made by Station Master Jutogh, addressed to CRP Shimla on 28.11.2021. This document falls within the definition of admitted document and can be taken into consideration. Apart from this, copy of Case Crime No. 90

of 2021, has also been annexed. Copy of FIR No. 08 of 2021 has been annexed as Annexure P-2. Annexure P-3 is the minutes of meeting held on 28.11.2021, along with minutes of meeting held on 29.11.2021. Annexure P-4 is the judgment of this Court passed in Cr.MMO No. 902 of 2022, by virtue of which, FIR No. 8 of 2021, dated 28.11.2021, under Sections 341, 147, 149 of IPC and Section 174 of Railway Act, 1989 was quashed. The above documents i.e. Annexure P-1 to Annexure P-3, in the considered opinion of this Court are admitted documents, which can be taken into consideration.

21. The perusal of the FIR No. 8 of 2021, shows that the said FIR was registered with Government Railway Police Station Shimla, on the complaint of Station Master Jutogh. As per the said FIR, on 28.11.2021, at about 10:55 am, about 250 persons along with the Diwakar Dev Sharma, Counselor Majyath, sat on railway track, resultantly causing obstruction in the free flow of railway service. They sat on dharna for about 3½ hours, as such, a request has been made to take action against them, whereas, in the complaint bearing Case Crime No. 90 of

2021, dated 28.11.2021, similar allegations have been levelled.

22. In such situation, this Court is of the view that for the same crime, second FIR/case i.e. Case Crime No. 90 of 2021, dated 28.11.2021, is not sustainable in the eyes of law, as the FIR bearing No. 8 of 2021, which was registered at the instance of Station Master Jutogh, has already been quashed by this Court on 26.04.2023, by holding that no case is made out against the petitioners. Relevant paragraphs No. 20 to 32, are reproduced, as under:-

> "*20. Similarly, this Court finds that though the petitioners herein stand booked under S.147 and 149 IPC, but there is no allegation that the petitioners and other persons, ever formed an unlawful assembly and caused damage, to the public property or train.*
> *21. Provisions of Ss. 147 and 149 IPC read as under:*
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> > *"147.* ***Punishment for rioting****.—Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*
> > *148.* ***Rioting, armed with deadly weapon****. —Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*
> > *149.* ***Every member of unlawful assembly guilty of offence committed in prosecution of common object****.—If an offence is*

committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence."

22. Bare perusal of aforesaid provisions of law reveals that, under S.147, whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

23. Apart from aforesaid provision, S.148 reveals that, "Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both"

24. Perusal of S.149 IPC reveals that, "If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence."

25. To attract Ss. 147 and 149 IPC, it is incumbent upon the prosecution to prove that on the date of alleged incident, some force or violence was used by members of unlawful assembly and that at the relevant time, they had come on the spot with deadly weapon.

26. In the instant proceedings, bare perusal of contents of FIR as well as final report under S.173 CrPC, suggests that no member of 'unlawful assembly' was carrying any kind of deadly weapon with them, rather, as per own case of the prosecution, they had obstructed railway track with a view to lodge their protest on account of death of one person, who died after being hit by train.

27. To attract S.149, firstly, it is incumbent upon prosecution to prove that an unlawful act was

committed by any member of the assembly and all members gathered on the spot had a common object. In the case at hand, common object, if any, of the persons on the spot was to protest against death of one person and they were compelled to obstruct traffic on account of apathy shown by railways to the repeated requests for construction of overhead bridge enabling locals to cross the traffic safely.

28. Since there is no specific complaint, if any, of rioting or any damage caused to the public property including train, provisions of Ss. 147 and 149 are also not attracted.

29. Mr. Vishal Panwar, learned Additional Advocate General invited attention of this Court to S.174 of the Indian Railways Act, 1989, which is reproduced herein below:

> *"174. Obstructing running of train, etc.—If any railway servant (whether on duty or otherwise) or any other person obstructs or causes to be obstructed or attempts to obstruct any train or other rolling stock upon a railway, —*
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> *(a) by squatting or picketing or during any Rail roko agitation or bandh; or*
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> *(b) by keeping without authority any rolling stock on the railway; or*
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> *(c) by tampering with, disconnecting or interfering in any other manner with its hose pipe or tampering with signal gear or otherwise, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both."*

30. No doubt, as per aforesaid provision of law, a person shall be punished with imprisonment for a term not exceeding two years on account of his having obstructed railway track, but if the averments contained in the FIR sought to be quashed in the instant proceeding, are perused in their entirety, there is no specific allegation that the persons named in the FIR obstructed passage of train rather, they came on the spot to lodge protest against death of a local person but thereafter, they disbursed after being assured by the authorities of Railways and the

State i.e. Sub Divisional Magistrate that necessary provision of overhead bridge shall be made.

31. Leaving everything aside, this court having taken note of the material placed on record alongwith final report filed under S.173 CrPC, has no hesitation to conclude that the alleged incident of obstructing railway track happened on account of emotional outburst on account of death of a local person and none of the agitators including the petitioners had any kind of intention to obstruct the railway track or cause damage to public property but since their repeated requests were not paid any heed by the railway administration or district administration, after death of one person, petitioners gathered to agitate against railway administration.

32. Moreover, this Court finds from the list of witnesses enclosed with the final report under S.173 CrPC, that prosecution intends to prove its case with the help of witnesses, who are employees of railways. During proceedings of the case, Mr. Verma, learned Central Government Counsel was unable to point out any independent witness associated by railway authorities or the railway police to prove case of prosecution against the petitioners. No doubt, version put forth by interested witnesses cannot be brushed aside on account of their being interested or having relation with the complainant/injured, but certainly their statements cannot be taken as a gospel truth rather, same are required to be corroborated by independent witnesses, which in the present case is missing."

23. The learned Additional Advocate General, as well as, learned Counsel appearing for respondents No. 2 and 3, could not satisfy the judicial conscience of this Court as how the second/similar complaint, on the same facts, is maintainable before the Court of Law, that too,

when FIR No. 8 of 2021 has already been quashed by holding that no case is made out, against the petitioners.

24. In view of the above, this Court is of the view that the petitioners are able to make out a case in their favour for allowing the petition. Consequently, the petition under consideration is allowed and Case Crime No. 90 of 2021, dated 28.11.2021, under Sections 145, 146, 147 and 174 of the Railway Act, registered with Railway Police Station Shimla, District Shimla, H.P., as well as, the proceedings resultant thereto, which are stated to be pending before the learned trial Court, are ordered to be quashed.

25. Pending miscellaneous applications, if any, shall also stand disposed of accordingly.

26. Record be sent back forthwith.

(Virender Singh)
Judge

6th January, 2026
(Pramod Kumar)