



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CrMMO No. 168 of 2021
Date of Decision: 23.2.2026

Diwakar Dev Sharma

.....Petitioner

Versus

Railway Police Force and Anr.

.....Respondent

Coram

Hon’ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? Yes.

For the Petitioner: Mr. Naresh K. Sharma, Advocate.

For the Respondent: Mr. V. B. Verma, Senior Panel Counsel, for respondent No.1.
Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocates General and Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General, for respondent No.2.

Sandeep Sharma, J. (Oral)

By way of instant petition filed under Section 482 of the Cr.PC, read with Article 227 of the Constitution of India, prayer has been made by the petitioner, who at the relevant time, was elected Councilor of Municipal Corporation, Shimla, for quashing of case crime No. 53 of 2020 dated 18.12.2020, registered under Section 153 of the Railways Act, 1989 (in short the “Act”) titled as *State v. Diwakar Dev Sharma*, alongwith further proceedings arising therefrom against him as well as notice dated

28.2.2021 (Annexure P-10) issued by the learned Chief Judicial Magistrate, Shimla.

2. Precisely, the facts of the case, as emerge from the record are that petitioner being elected Councilor of ward No. 7, Municipal Corporation, Shimla, raised issue of laying sewerage line through Nalah/track by Municipal Corporation, Shimla. Authorities concerned after having checked the feasibility found that entire land adjoining to ward No. 7 is abutting railway line and accordingly, took up the matter with railway authorities. Municipal Corporation, Shimla preferred online application dated 3.7.2018 to DRM Ambala /Engineer Northern Railway for the purpose of laying drainage/sewerage line. Pursuant to afore application dated 3.7.2018, Senior Divisional Engineer-HQ, Northern Railway, Ambala Cantt. sent a communication dated 6.11.2018, thereby according permission for crossing of drainage/sewerage pipeline at Km88/12 and 89/6 between Tara Devi and Jutogh stations, subject to deposit of Rs. 17,43,042/- towards estimate charges. Municipal Corporation, Shimla, deposited the afore amount, whereafter railway authorities granted permission to lay drainage/sewerage pipeline between Tara Devi and Jutogh under the supervision of the railway authorities. Allegedly, Municipal Corporation, Shimla, did not lay the drainage/sewerage line

properly, as a result of which, blocks constructed got burst before its functioning and very purpose of laying the pipeline could not be achieved. Municipal Corporation, Shimla reconstructed the required blocks properly from the hard surface for the support of sewerage pipeline and made the same functional for facility of general public. According to the approved plan, DI pipeline was required to be laid from km88.717 to Km.89.307 parallel to the railway boundary through clamping method to the right side of the track, wherafter it was to cross the railway track at Km. 89.307 by cut and cover method under traffic block and after that it was to be laid parallel to the railway track from Km.89.307 to Km.89.400 by clamping method to the left side of the track.

3. Allegedly, Junior Engineer, Sewerage Division Tutikandi, Shimla (now known as SJPNL) i.e. executing agency did not follow the approved/sanctioned plans/tracks. Since number of discrepancies were found on the spot, railway authorities repeatedly sent notices to the executing agency i.e. Municipal Corporation, Shimla. However, no much heed was paid to the same, rather allegedly, petitioner, who at the relevant time, was councilor of the ward concerned, insisted to erect electric pole alongside the railway line thereby endangering the safety of persons travelling in the railway. In the aforesaid background, criminal case under

Section 153 of Act came to be instituted against the petitioner and two other officials namely Manish Rana and Veer Singh Parihar.

4. Since after completion of investigation, railway authorities submitted the challan in the court of learned Chief Judicial Magistrate, Shimla and same is pending adjudication, petitioner has approached this Court in the instant proceedings for quashing of FIR as well as consequent proceedings on the ground that he had no role, whatsoever, in the construction of sewerage pipeline, rather same was laid down by the executing agency. It is stated in the petition that though petitioner being elected representative of the ward concerned had raised issue of laying sewerage pipeline in the public interest, but same was ultimately laid down by the officials of the executing agency.

5. While making this Court peruse memo issued to the petitioner by the railway authorities, Mr. Naresh K. Sharma, learned counsel representing the petitioner vehemently argued that no case much less under Section 153 of the Act is made out against the petitioner because no action of him ever endangered safety of persons travelling in the railway that too willfully. He submitted that petitioner was only instrumental in getting the plan approved/sanctioned, but on the spot, sewerage line was laid down under the supervision of officials of SJPNL and railway

authorities. He further submitted that as per own case of the railways, no obstruction was ever caused in the traffic movement on the concerned railway line, rather entire dispute arose *inter-se* parties on account of erection of electric pole alongside the railway line. Mr. Sharma submitted that though with the erection of pole, employees of the railways, who live alongside the railway line were benefited, but yet on the objection raised by the railway authorities, same was removed.

6. Mr. Rajan Kahol, learned Additional Advocate General, appearing for the respondent-State and Mr. V.B. Verma, learned Senior Panel Counsel, representing respondent No.1-railway authorities, vehemently opposed the prayer made by the petitioner for quashing for FIR on the ground that unauthorized construction in violation of the approved plan was done on the spot at the insistence of the petitioner, who solely with view to gain public sympathy not only called upon authorities of Municipal Corporation, Shimla to lay the sewerage pipeline by erecting cement pillars, but also got the eclectic pole erected alongside the railway line thereby endangering the safety of persons travelling by train. Learned Additional Advocate General vehemently argued that on account of erection of electric pole on the railway lines, there was imminent danger to the safety of persons travelling through railway and as such, no illegality can

be said to have been committed by the respondents by registering case under Section 153 of the Act. Lastly, learned Additional Advocate General submitted that challan already stands filed in the competent court of law and as such, this petition is otherwise not maintainable, rather petitioner ought to have contested the case at the time of framing of charge on the grounds which are attempted to be raised in the instant proceedings.

7. I have heard the learned counsel for the parties and gone through record of the case.

8. Before ascertaining the correctness of the rival submissions made at the behest of the parties to the lis vis-à-vis prayer for quashing of FIR, this Court deems it fit to elaborate upon the power of this Court under Section 482 of CrPC to quash the FIR.

9. Hon'ble Apex Court in judgment titled ***State of Haryana and others vs. Bhajan Lal and others, 1992 Supp (1) SCC 335*** has laid down several principles, which govern the exercise of jurisdiction of High Court under Section 482 Cr.P.C. Before pronouncement of aforesaid judgment rendered by the Hon'ble Apex Court, a three-Judge Bench of Hon'ble Court in ***State of Karnataka vs. L. Muniswamy and others, 1977 (2) SCC 699***, held that the High Court is entitled to quash a proceeding, if it comes to the conclusion that allowing the proceeding to

continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. Relevant para is being reproduced herein below:-

“7....In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court’s inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the 57 inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.”

10. Subsequently, Hon’ble Apex Court in **Bhajan Lal** (supra), has elaborately considered the scope and ambit of Section 482 Cr.P.C. Subsequently, Hon’ble Apex Court in **Vineet Kumar and Ors. v. State of U.P. and Anr.**, while considering the scope of interference under Sections

397 Cr.PC and 482 Cr.PC, by the High Courts, has held that High Court is entitled to quash a proceeding, if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceedings ought to be quashed. The Hon'ble Apex Court has further held that the saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose i.e. a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In the aforesaid case, the Hon'ble Apex Court taking note of seven categories, where power can be exercised under Section 482 Cr.PC, as enumerated in **Bhajan Lal** (supra), i.e. where a criminal proceeding is manifestly attended with malafides 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, quashed the proceedings.

11. Hon'ble Apex Court in **Prashant Bharti v. State (NCT of Delhi)**, (2013) 9 SCC 293, while drawing strength from its earlier judgment titled as **Rajiv Thapar and Ors v. Madan Lal Kapoor**, (2013) 3 SCC 330, has reiterated that High Court has inherent power under Section 482 Cr.PC., to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the

stage of framing of charge, but such power must always be used with caution, care and circumspection. While invoking its inherent jurisdiction under Section 482 of the Cr.P.C., the High Court has to be fully satisfied that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts and the material adduced on record itself overrules the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice. In the aforesaid judgment titled **Prashant Bharti v. State (NCT of Delhi), (2013)**

9 SCC 293, the Hon'ble Apex Court has held as under:-

“22. The proposition of law, pertaining to quashing of criminal proceedings, initiated against an accused by a High Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as “the Cr.P.C.”) has been dealt with by this Court in *Rajiv Thapar & Ors. vs. Madan Lal Kapoor* wherein this Court inter alia held as under: (2013) 3 SCC 330, paras 29-30)

29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to

quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

30.1 Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

30.2 Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

30.3 Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

30.4 Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5 If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal - proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”

12. Hon'ble Apex Court in **Asmathunnisa v. State of A.P. (2011)**

11 SCC 259, has held as under:

"12. This Court, in a number of cases, has laid down the scope and ambit of the High Court's power under section 482 of the Code of Criminal Procedure. Inherent power under section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.

13. The law has been crystallized more than half a century ago in the case of *R.P. Kapur v. State of Punjab* AIR 1960 SC 866 wherein this Court has summarized some categories of cases where inherent power can and should be exercised to quash the proceedings. This Court summarized the following three broad categories where the High Court would be justified in exercise of its powers under section 482:

- (i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;
- (ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;
- (iii) where the allegations constitute an offence but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge."

14. In *Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and Others* (1976) 3 SCC 736, according to the court, the process against the accused can be quashed or set aside :

"(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like".

15. This court in *State of Karnataka v. L. Muniswamy & Others* (1977) 2 SCC 699, observed that the wholesome power under section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice requires that the proceedings ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In this case, the court observed that ends of justice are higher than the ends of mere law though justice must

be administered according to laws made by the Legislature. This case has been followed in a large number of subsequent cases of this court and other courts.”

13. Hon'ble Apex Court in **Asmathunnisa** (supra) has categorically held that where discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like, High Court would be justified in exercise of its powers under S. 482 CrPC.

14. From the bare perusal of aforesaid exposition of law, it is quite apparent that while exercising its inherent power under Section 482 Cr.PC., High Court can proceed to quash the proceedings, if it comes to the conclusion that allowing the proceedings to continue would be an abuse of process of the law.

15. Now being guided by the aforesaid law laid down by the Hon'ble Apex Court, this court would make an endeavour to find out “*whether prayer made by the petitioner for quashing of FIR can be accepted by this court while exercising power under Section 482 of CrPC or not?*.”

16. It is not in dispute that petitioner was not responsible for execution of the work on the spot rather he being elected representative of the ward concerned was only instrumental in getting the work of laying sewerage pipe sanctioned from the competent authority.

17. Once it is not in dispute that at the relevant time, petitioner was elected representative of the ward concerned, this Court has reason to presume and believe that issue with regard to laying of sewerage pipeline was raised by the petitioner in larger public interest. It is also not in dispute that work of laying down sewerage pipeline was duly approved and sanctioned by the railway authorities. As per sanctioned plan, sewerage pipeline was to be laid down alongside the railway line using clamping method, but allegedly an attempt was made to lay the sewerage pipeline by raising the concrete block. Admittedly, as per sanctioned plan, no electric pole could have been erected alongside the railway line, which was otherwise laid down on the spot by the executing agency.

18. At this stage, it would be apt to take note of Section 153 of the Railway Act.

“153. Endangering safety of persons travelling by railway by wilful act or omission-

If any person by any unlawful act or by any wilful omission or neglect, endangers or causes to be endangered the safety of any person travelling on or being upon any railway, or obstructs or

causes to be obstructed or attempts to obstruct any rolling stock upon any railway, he shall be punishable with imprisonment for a term which may extend to five years.”

19. As per afore provision of law, if any person by any unlawful act or by any willful omission or neglect, endangers or causes to be endangered the safety of any person travelling on or being upon any railway, or obstructs or causes to be obstructed or attempts to obstruct any rolling stock upon any railway, he shall be punishable with imprisonment for a term which may extend to five years.

20. Having carefully perused aforesaid provision of law, this Court is persuaded to agree with learned counsel for the petitioner that no case is made out of the against the petitioner under Section 153 of Act, because at no point of time, any unlawful activity was done by the petitioner, which otherwise would have endangered the safety of any person travelling in the railway. There is nothing to suggest that petitioner after his having got the work sanctioned/approved by the competent authority ever got himself involved in the execution of the work, rather as per own case of the railways work was executed on the spot by the executing agency that too under the supervision of railway authorities. It is none of the case of the respondents that petitioner being elected representative of the area forcibly got the work done on the site in violation of the approved/sanctioned plan.

Moreover, there is nothing on record to suggest that on account of erection of the electric pole alongside the railway line, safety of any person traveling in the railway or upon any railway line was endangered. None of the passengers traveling in the train ever lodged complaint. Complaint was lodged by the railway authorities, who were otherwise under obligation to supervise the work. Once there was no provision to erect electric pole in the approved/sanctioned plan, there was otherwise no occasion for the railway authorities to permit the Municipal Corporation, Shimla to erect the electric pole, which has been now removed. There is nothing on record to suggest that petitioner caused any type of public nuisance on the spot and restrained railway authorities from objecting to alleged unauthorized construction raised on the spot by the executing agency. It clearly emerges from the pleadings and record that petitioner had no role to play after according approval by the railway authorities, whereafter admittedly work was executed on the spot by the officials of the executing agency.

21. Having scanned the entire evidence, this Court has no hesitation to conclude that, no case much less, case under the aforesaid provision of law can be said to have been made out against the petitioner. Since for the discussion made herein above, case of the prosecution is likely to fail in any eventuality, this Court finds the case at hand to be fit case for

exercising power under Section 482 CrPC to quash complaint as well as consequent proceedings. If prayer made in the instant petition is not accepted, petitioner would be unnecessarily subjected to ordeal of the protracted trial, which is otherwise bound to culminate in acquittal of the accused.

22. Consequently, in view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court (supra), present petition is allowed and case crime No. 53 of 2020 dated 18.12.2020 registered under Sections 153 of the Act as well as consequent proceedings are quashed and set aside. Petitioner is acquitted of the charges framed against him. The petition stands disposed of in the aforesaid terms, alongwith all pending applications.

February 23, 2026

(manjit)

**(Sandeep Sharma),
Judge**