

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

Cr. MMO No. 211 of 2025

Reserved on: 27.05.2025

Date of Decision: 18.06.2025.

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**Vinod Kumar****....Petitioner****Versus****State of H.P. & others****....Respondents**

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***Coram******Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting? Yes***

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| For the petitioner | : | Mr. Raju Ram Rahi,<br>Advocate. |
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| For respondents/State. | : | Mr. Lokender Kutlehria,<br>Additional Advocate<br>General |
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**Rakesh Kainthla, Judge**

The petitioner has filed the present petition under Section 528 of the Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023, for quashing of F.I.R. No. 40 of 2018, dated 10.03.2018, registered at Police Station Dharamshala, District Kangra, H.P. for the commission of an offence punishable under Section 406 of Indian

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Whether reporters of the local papers may be allowed to see the judgment? Yes

Penal Code (IPC) and the consequential proceedings arising out of the said F.I.R.

2. Briefly stated, the facts giving rise to the present petition are that the informant made a complaint to the police stating that M/S Sidhbari Cooperative Tea Factory is an establishment covered under the Employees Provident Fund and Miscellaneous Provisions Act, 1952. The employer of the establishment is under a statutory obligation to deduct the employee's share of the Provident Fund contribution from their wages. The deducted amount is like a trust fund with the employer. It was found that M/S Sidhbari Cooperative Tea Factory had deducted the employee's share of contribution from their wages w.e.f. March 2016 to July 2017, but failed to deposit the contribution into the statutory fund. Therefore, offences punishable under Sections 406 and 409 of the IPC were committed by the employer. The police registered the F.I.R. and conducted the investigation.

3. Being aggrieved by the registration of the F.I.R. and the investigation conducted by the police. The petitioner has filed the present petition for quashing the F.I.R. It has been asserted that the petitioner had no concern with the processing, producing, transporting and marketing of tea. M/S Sidhbari Cooperative Tea

Factory invited quotations as per the resolution dated 07.10.2014 for leasing out the Tea factory from 01.01.2015 till 31.12.2019. The petitioner quoted the highest amount of ₹ 71,14,914/- , and the lease was awarded in favour of the petitioner. The petitioner was facing difficulty in running the factory. The factory failed to produce 2 lakh KG per annum as mentioned in the tender. The petitioner had to clear the past liability of ₹ 5 lakhs. He suffered losses. He requested a reduction in the lease money. This request was accepted, and the lease money was reduced to ₹ 15 lakh per annum for the first five years and ₹ 16,50,000/- for the next five years. The society was superseded on 16.05.2017, and notice of termination of the lease deed was received by the petitioner on 01.09.2017. The petitioner is not registered under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and the contributions are to be paid by the principal employer. The workers were not employed by the petitioner, but they were engaged by M/S Sidhbari Cooperative Society. The responsibility of the employees was not delegated to the petitioner. The F.I.R. does not disclose any cognizable offence. The matter involves a civil dispute. The continuation of the proceedings would amount to an abuse of the process of the Court. Therefore, it was prayed that the present petition be allowed and the

F.I.R. and the consequential proceedings arising out of the said F.I.R. be quashed.

4. I have heard Mr. Raju Ram Rahi, learned counsel for the petitioner and Mr. Lokender Kuthelria, Additional Advocate General, for respondents No.1 and 2/State.

5. Mr. Raju Ram Rahi, learned counsel for the petitioner, submitted that a false F.I.R. was registered against the petitioner. The petitioner is not the Principal employer and is not liable to deposit the EPF contribution. The allegations in the F.I.R. do not constitute the commission of any cognizable offence; rather, it is a civil dispute. Therefore, he prayed that the present petition be allowed and the F.I.R. and consequential proceedings arising out of the same F.I.R. be quashed. He relied upon *Horticulture Experiment Station, Gonikoppal, Coorg vs Regional Provident Fund Organisation 2022 (4) 516* in support of his submission.

6. Mr. Lokender Kutlehria, Additional Advocate General for the respondents Nos 1 and 2/State, submitted that the petitioner falls within the definition of the employer. He had deducted contributions from the employees. Therefore, he was duty-bound to deposit them into the statutory funds; however, he failed to do so,

which amounts to a breach of trust. Therefore, he prayed that the present petition be dismissed.

7. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

8. The law relating to quashing of criminal cases was explained by the Hon'ble Supreme Court in *B.N. John v. State of U.P.*, 2025 SCC OnLine SC 7 as under: -

“7. As far as the quashing of criminal cases is concerned, it is now more or less well settled as regards the principles to be applied by the court. In this regard, one may refer to the decision of this Court in *State of Haryana v. Ch. Bhajan Lal*, 1992 Supp (1) SCC 335, wherein this Court has summarised some of the principles under which FIR/complaints/criminal cases could be quashed in the following words:

“102. 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 within 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 FIR 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.*

(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 a private and personal grudge.” (*emphasis added*)

8. Of the aforesaid criteria, clause no. (1), (4) and (6) would be of relevance to us in this case.

In clause (1) it has been mentioned that 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, then the FIR or the complaint can be quashed.

As per clause (4), where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order dated by the Magistrate as contemplated under Section 155 (2) of the CrPC, and in such a situation, the FIR can be quashed.

Similarly, as provided under clause (6), if there is an express legal bar engrafted in any of the provisions of the CrPC or the concerned Act under which the criminal proceedings are instituted, such proceedings can be quashed.”

9. This position was reiterated in *Ajay Malik v. State of Uttarakhand*, 2025 SCC OnLine SC 185, wherein it was observed:

“8. It is well established that a High Court, in exercising its extraordinary powers under Section 482 of the CrPC, may issue orders to prevent the abuse of court processes or to secure the ends of justice. These inherent powers are neither controlled nor limited by any other statutory provision. However, given the broad and profound nature of this authority, the High Court must exercise it sparingly. The conditions for invoking such powers are embedded within Section 482 of the CrPC itself, allowing the High Court to act only in cases of clear abuse of process

or where intervention is essential to uphold the ends of justice.

9. It is in this backdrop that this Court, over the course of several decades, has laid down the principles and guidelines that High Courts must follow before quashing criminal proceedings at the threshold, thereby preempting the Prosecution from building its case before the Trial Court. The grounds for quashing, *inter alia*, contemplate the following situations : (i) the criminal complaint has been filed with *mala fides*; (ii) the FIR represents an abuse of the legal process; (iii) no *prima facie* offence is made out; (iv) the dispute is civil in nature; (v.) the complaint contains vague and omnibus allegations; and (vi) the parties are willing to settle and compound the dispute amicably (*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335).

10. It was held in *State of Karnataka v. L. Muniswamy* (1977) 2 SCC 699: 1977 SCC (Cri) 404 that the High Court can quash the criminal proceedings if they amount to an abuse of the process of the Court. It was observed on page 703:

“7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it concludes 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 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.”

11. The term abuse of the process was explained in *Chandran Ratnaswami v. K.C. Palanisamy*, (2013) 6 SCC 740: (2014) 1 SCC (Cri) 447: 2013 SCC OnLine SC 450 at page 761:

33. The doctrine of abuse of process of court and the remedy of refusal to allow the trial to proceed is a well-established and recognised doctrine both by the English courts and courts in India. There are some established principles of law which bar the trial when there appears to be an abuse of the process of the court.

34. Lord Morris in *Connelly v. Director of Public Prosecutions* [1964 AC 1254 : (1964) 2 WLR 1145 : (1964) 2 All ER 401 (HL)], observed: (AC pp. 1301-02)

“There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. ... A court must enjoy such powers in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of its process.

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The power (which is inherent in a court's jurisdiction) to prevent abuses of its process and to control its procedure must in a criminal court include a power to safeguard an accused person from oppression or prejudice.”

In his separate pronouncement, Lord Delvin in the same case observed that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial.

35. In *Hui Chi-ming v. R.* [(1992) 1 AC 34 : (1991) 3 WLR 495 : (1991) 3 All ER 897 (PC)], the Privy Council defined the word “abuse of process” as something so unfair and wrong with the prosecution that the court should not allow a prosecutor to proceed with what is, in all other respects, a perfectly supportable case.

36. In the leading case of *R. v. Horseferry Road Magistrates' Court, ex p Bennett* [(1994) 1 AC 42 : (1993) 3 WLR 90 : (1993) 3 All ER 138 (HL)], on the application of the abuse of process, the court confirms that an abuse of process justifying the stay of prosecution could arise in the following circumstances:

(i) where it would be impossible to give the accused a fair trial; or

(ii) where it would amount to misuse/manipulation of the process because it offends the court's sense of justice and propriety to be asked to try the accused in the circumstances of the particular case.

37. In *R. v. Derby Crown Court, ex p Brooks* [(1984) 80 Cr App R 164 (DC)], Lord Chief Justice Ormrod stated:

“It may be an abuse of process if either (a) the prosecution has manipulated or misused the process of the court to deprive the defendant of a protection provided by law or to take unfair advantage of a technicality, or (b) on the balance of probability the defendant has been, or will be, prejudiced in the preparation of conduct of his defence by delay on the part of the prosecution which is unjustifiable.”

38. Neill, L.J. in *R. v. Beckford (Anthony)* [(1996) 1 Cr App R 94: 1995 RTR 251 (CA)], observed that:

“The jurisdiction to stay can be exercised in many different circumstances. Nevertheless, two main strands

can be detected in the authorities: (a) cases where the court concludes that the defendant cannot receive a fair trial; (b) cases where the court concludes that it would be unfair for the defendant to be tried.”

What is unfair and wrong will be for the court to determine on the individual facts of each case.

12. It was held in *Mahmood Ali v. State of U.P.*, (2023) 15 SCC 488: 2023 SCC OnLine SC 950 that where the proceedings are frivolous or vexatious, the Court owes a duty to quash them. However, the Court cannot appreciate the material while exercising jurisdiction under Section 482 of the CrPC. It was observed at page 498:

13. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, try to read between the lines. The Court, while exercising its jurisdiction under Section 482CrPC or Article 226 of the Constitution, need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take, for instance, the case at hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances that the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge, as alleged.

14. *State of A.P. v. Golconda Linga Swamy* [*State of A.P. v. Golconda Linga Swamy*, (2004) 6 SCC 522: 2004 SCC (Cri) 1805], a two-judge Bench of this Court elaborated on

the types of materials the High Court can assess to quash an FIR. The Court drew a fine distinction between consideration of materials that were tendered as evidence and appreciation of such evidence. Only such material that manifestly fails to prove the accusation in the FIR can be considered for quashing an FIR. The Court held : (*Golconda Linga Swamy case [State of A.P. v. Golconda Linga Swamy, (2004) 6 SCC 522: 2004 SCC (Cri) 1805]*, SCC p. 527, paras 5-7)

“5. ... Authority of the court exists for the 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 the promotion of justice. In the exercise of its powers court would be justified in quashing any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of the 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.*

6. In *R.P. Kapur v. State of Punjab [R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21: AIR 1960 SC 866]*, this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings : (SCC OnLine SC para 6)

(i) where it manifestly appears that there is a legal bar against the institution or continuance, e.g. want of sanction;

(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.*

*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, the accusation would not be sustained. That is the function of the trial Judge. The judicial process, no doubt, should not be an instrument of oppression or needless harassment. The court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing the 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.” (emphasis supplied)*

13. The present petition is to be decided as per the parameters laid down by the Hon’ble Supreme Court.

14. It is undisputed that the petitioner was running a factory at the time of inspection. It was specifically mentioned in the present petition that the petitioner had taken the factory on lease from M/s Sidhbari Cooperative Tea Factory. Section 2(e) of the EPF Act defines the employer as the owner or occupier of the

factory, including the agent of such owner or occupier. The term occupier of the factory is defined in Section 2(k) of the EPF Act as the person who has ultimate control over the affairs of the factory, and where the affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory.

15. In the present case, the averments made in the present petition show that management of the factory was entrusted to the petitioner by way of lease. It was laid down by the Madras High Court in *Basha Khan, In re*, 1965 SCC OnLine Mad 288: AIR 1966 Mad 343 that a lessee of a factory will fall within the definition of the occupier. It was observed at page 344:

“3... It is an undisputed fact that the petitioner is the owner of the rice mills, but he has leased the mills under Ex. D-1 and was receiving the rent every month, the lessees would no doubt be occupiers within the meaning of Section 2(n) of the Act, as they have ultimate control over the affairs of the mills. If they fail to comply with the provisions of Section 7 of the Factories Act, they could be proceeded against for such default. If, however, they complied with the provisions of Section 7 of the Factories Act and gave the name of the manager, that person could be proceeded against for violation of R. 100(2) of the Rules framed under the Act.”

16. A similar view was taken in *South India Corporation (Travancore) Ltd. v. Chief Inspector of Factories*, 1956 SCC OnLine Ker 143, wherein it was observed:

12. The above provisions of the Act and rules make it perfectly clear that the owner of a factory has, by virtue of such status alone, no right to make an application for and get either the registration and licensing of a factory or the transfer or renewal of the licence once granted. If the owner came in at all, it was only for incurring liability in the stead of the occupier in particular circumstances. It was the “occupier” and he alone who took the paramount place. Such an “occupier” may be an owner or lessee, or a mere licensee. But the point was that he must have the right to occupy a property and dictate how it had to be managed. He might not actually occupy the building, but he must have control of its operation.

17. Therefore, the petitioner will fall within the definition of the occupier, and he, being an occupier, was bound to deduct the contribution and deposit the same into the statutory funds. Hence, the submission that the petitioner is not liable to deposit the contribution and the proceedings were wrongly initiated against him cannot be accepted.

18. The judgment in *Horticulture Experiment Station (supra)* deals with the recovery proceedings initiated under Section 14 B of the EPF Act, and the same is not relevant in the present case.

19. It was submitted that the registration of the F.I.R. is not proper because the remedy of recovery of the amount by way of civil proceedings was available to the Inspector, and instead of

resorting to such a recovery, the Inspector had filed a complaint, which is impermissible. This submission cannot be accepted. Explanation to Section 406 of the IPC specifically provides that failure to deposit the contribution will be an offence punishable under Section 406 of the IPC. Therefore, the Inspector was justified in taking recourse to Section 406 of the IPC, and his action cannot be faulted.

20. It was laid down by the Hon'ble Supreme Court in *Trisuns Chemical Industry v. Rajesh Agarwal*, (1999) 8 SCC 686: 2000 SCC (Cri) 47 that the availability of the remedy of arbitration is no ground to quash the criminal proceedings. It was observed at page 690:

“9. We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording relief to the party affected by a breach of the agreement, but the arbitrator cannot conduct a trial of any act which amounted to an offence, albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases as indicated in *State of*

*Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426].”*

21. Hence, the availability of the alternative remedy will not help the petitioner.

22. The allegations in the F.I.R. show that the petitioner had failed to deposit the EPF contribution despite its deduction. These allegations, *prima facie*, satisfy the requirement of Section 406 of the IPC, and the F.I.R. cannot be quashed in the present case.

23. No other point was urged.

24. In view of the above, the present petition fails, and the same stands dismissed.

25. The observations made herein before shall remain confined to the disposal of the petition and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla)  
Judge

18<sup>th</sup> June, 2025.

(ravinder)