IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO No.363 of 2023
Date of Decision: 19.06.2024

Sita Ram Sharma

.....Petitioner

Versus

State of HP & Anr.

... Respondents

Coram:
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? [1] Yes.

For the Petitioner: Mr. Neeraj Sharma, Advocate.

For the Respondent : Mr. Rajan Kahol & Mr. B.C. Verma, Additional Advocate Generals with Mr. Ravi Chauhan, Deputy Advocate General for respondent-State.

Sandeep Sharma, Judge(oral):

By way of instant petition filed under Section 482 of the Code of Criminal Procedure, prayer has been made on behalf of the petitioner for quashing of Kalandra under Section 186 of Indian Penal Code filed by the Police Station Sunni, District Shimla, H.P., as well as consequent proceedings pending adjudication in the court of learned Judicial Magistrate First Class, Court No. I, Shimla, District Shimla, HP in Kalandra No.1 of 2020 titled as *State Vs. Sita Ram Sharma*.

2. For having bird's eye view, facts relevant for adjudication of the case at hand are that on 24.08.2019, respondent No. 2, who at

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

the relevant time was Station House Officer, Police Station Sunni, was on traffic checking duty at Basantpur near Sunni alongwith other police officials. At around 02:30 p.m. a vehicle bearing registration No. HP-03C-1920 being driven by the petitioner came from Basantpur side. Since, driver of the vehicle was not wearing seat belt, he was signaled to stop, but allegedly vehicle was not stopped. However, after having finished traffic checking at Basantpur, respondent No. 2 alongwith other officials went towards Sunni and found vehicle bearing registration No. HP-03C-1920 parked near Rinku Bhojnalya/Eatery at Sunni. Respondent No. 2 inquired about the driver of the said vehicle, on which the person came out from the Dhaba and disclosed that he is owner of the vehicle. Respondent No. 2 told the person concerned i.e. petitioner herein that why he failed to stop despite signal. However, allegedly petitioner besides misbehaving with the Police official also went live on Facebook by making remarks that “I am Sita Ram Sharma, posted as Superintendent in the Himachal Pradesh Secretariat. My father was a freedom fighter and I am going to meet my old age mother. I stopped here to take tea and tea is in my hand. The Police is doing challan of my parked vehicle for no reason.”

3. Having taken note of aforesaid misbehaviour and obstruction in duty, respondent No. 2 after having obtained necessary

permission from the Magistrate under Section 195 Cr.P.C prepared Kalandra under Section 186 of the Indian Penal Code and presented the same in the court of Judicial Magistrate First Class, Court No. I, Shimla, District Shimla, HP, however, before doing aforesaid exercise, respondent No. 2 also challaned the petitioner under Sections 177 and 179 of Motor Vehicles Act for his having plied vehicle without wearing seat belt and disobeying the Police signal. Before aforesaid Kalandra could be taken to its logical end, petitioner has approached this court in the instant proceedings for quashing of FIR on the ground that no case much less under Section 186 of the Indian Penal Code is made out.

4. Mr. Neeraj Sharma, learned counsel for the petitioner, while making this court peruse provisions contained under Section 186 of Indian Penal Code vis-a-vis allegations levelled against the petitioner, strenuously argued that at no point of time obstruction, if any, was caused by the petitioner to respondent No. 2, who allegedly at that relevant time was checking the vehicle alongwith Police officials. Mr. Sharma, while making this court peruse contents of Kalandra strenuously argued that as per own of the case of the prosecution, petitioner despite his being asked to stop, failed to stop his vehicle and thereafter, he refused to show his documents and in that regard, he was challaned under Sections 177 and 179 of Motor

Vehicles Act. Mr. Sharma, submitted that at no point of time, petitioner misbehaved or obstructed respondent No. 2 from doing his duty. He submitted that since there is no evidence available on record suggestive of the fact that on the alleged date of incident obstruction, if any, was caused by the petitioner in discharge of public duty being performed by respondent No. 2, chances of conviction of the petitioner are very remote and bleak. Hence, continuance of proceedings under Section 186 of Indian Penal Code, which are otherwise bound to fail, would not only waste the precious time of the court, but would also unnecessarily cause harassment to the petitioner.

5. To the contrary, Mr. Rajan Kahol, learned Additional Advocate General, while refuting the afore submissions made on behalf of the petitioner, vehemently argued that once petitioner failed to stop his vehicle despite signal being given by the Police officials and he failed to produce documents, no illegality can be said to have been committed by respondent No. 2, while initiating proceedings under Section 186 of the Indian Penal Code. He further submitted that very act of making video amounts to obstruction. However, Mr. Kahol, was unable to dispute that respondent No. 2 had challaned the petitioner under Sections 177 and 179 of Motor Vehicles Act for his

having plied vehicle without wearing seat belt and disobeying the Police signal.

6. Before ascertaining the genuineness and correctness of the submissions and counter submissions having been made by the learned counsel for the parties vis-à-vis prayer made in the instant petition, this Court deems it necessary to discuss/elaborate the scope and competence of this Court to quash the criminal proceedings while exercising power under Section 482 of Cr.PC.

7. 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 56 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."

8. 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 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 culled out note 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.

9. 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."

10. 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 9 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;
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> (2) where the allegations made in the complaint are patently absurd and inherently improbable so that no 10 prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;
>
> (3) where the d iscretion 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
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> (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."

11. 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.

12. From the bare perusal of aforesaid exposition of law, it is quite apparent that 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.

13. Now, being guided by aforesaid law taken into consideration, this court would make an endeavour to find out "*whether case, if any, much less under Section 186 of Indian Penal Code is made out against the petitioner-accused or not?*"

14. As per own case of the prosecution, on the date of alleged incident, petitioner failed to stop his vehicle despite signal and thereafter, vehicle in question could only be located near Rinku Bhojnalya by the Police. As per case of Police, Police after having reached Rinku Bhojnalya called upon the petitioner to show the documents, but he failed to do so. It is also not in dispute that Police challaned the petitioner under Sections 177 and 179 of Motor Vehicle Act for his having plied the vehicle without wearing seat belt and for disobeying Police signal. Proceedings under Section 186 of the Indian Penal Code came to be initiated against the petitioner-accused on account of his having caused obstruction in discharge of public duty by respondent No. 2. As per case of prosecution, when Police demanded the documents, petitioner-accused went live on Facebook and made remarks, as detailed hereinabove. .

15. Having taken note of allegations contained in the Kalandra filed under Section 186 of Indian Penal Code, which have been otherwise taken note in the earlier part of judgment, this court is persuaded to agree with Mr. Neeraj Sharma, learned counsel for the petitioner that no case under Section 186 of Indian Penal Code is made out. At this stage, it would be apt to take note of Section 186 of Indian Penal Code, which reads as under:

186. Obstructing public servant in discharge of public functions.—

Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

16. To invoke aforesaid provision of law, it is incumbent upon prosecution to prove that person charged with aforesaid section voluntarily obstructed any public servant in discharge of his public function. Section 186 IPC, which provides for conviction of a person, who voluntarily obstructed any public servant in the discharge of public function, with imprisonment, which may extend to three months or fine, however, in the instant case, there is nothing on record to suggest that the petitioner stopped Police from challaning him, rather police, after having noticed certain discrepancies, challaned him under Sections 177 and 179 of the Act. Making certain remarks, if any, on Facebook may not be sufficient to conclude obstruction, if any, caused by the petitioner. Otherwise also, import of the remarks allegedly made by the petitioner on Facebook, as have taken note hereinabove, nowhere indicates that an attempt was made by the petitioner to dissuade the Police officials from doing their duty, rather

by making post, petitioner attempted to state that he is being unnecessarily harassed.

17. Interestingly in the case at hand, Police official concerned challaned the petitioner under Sections 177 and 179 of Motor Vehicles Act, but no action, if any, ever came to be taken against him for his having not produced the documents of the vehicle. Since, petitioner had not produced the documents, police officials straightaway ought to have impounded the vehicle in question, which procedure was not adopted by them. Since, there is nothing on record to suggest that obstruction, if any, was ever caused by the petitioner while respondents No.2 was challaning him under Sections 177 and 179 of the Motor Vehicles Act, no proceeding, if any, under Section 186 of the Indian Penal Code could have been initiated against him. Since, basic ingredients of Section 186 of the Indian Penal Code are missing, chances of conviction of the petitioner-accused in a trial, if permitted to continue, are very remote and bleak. If it is so, no fruitful purpose would be served by permitting the trial to continue, rather continuance of trial would amount to sheer abuse of process of law.

18. Next question, which arises for consideration is that whether act of the petitioner making video or going life on Facebook would amount to voluntarily causing obstruction or not?

19. Once there is no allegation that accused used a physical force to cause any obstruction to the Police official, who admittedly after having noticed certain non-compliances on the part of the accused-petitioner, challaned him under Sections 177 and 179 of the Motor Vehicles Act, no case under Section 186 of the Indian Penal Code, could have been initiated against the petitioner. In order to make out an offence punishable under Section 186 of the Indian Penal Code, it is incumbent upon the prosecution to show that 1.) accused voluntarily obstructed a public servant and 2.) such obstruction was caused in discharge of public function of such public servant. The term “voluntarily” contemplate the commission of some overt act; mere passive conduct of a person would not amount to causing obstruction. In the present case, it is none of the case of the prosecution that petitioner obstructed the police officials from challaning him or impounding his vehicle. Rather, in the case at hand, police concerned challaned the petitioner under Sections 177 and 179 of Motor Vehicles Act.

20. Precise allegation in the case at hand against the petitioner is that he went live on Facebook and made certain comments, but certainly, such act, if any, of him, cannot be considered obstruction, if any, caused by the petitioner.

21. No doubt, expression “obstruction” does not unnecessarily mean physical obstruction, but in my view, any action accompanied by either show of force or threat or having the effect of obstructing the public servant from carrying out his duty, would constitute ‘obstruction’ for the purpose of Section 186 of the Indian Penal Code. In the case at hand, Police Officer was never obstructed in any manner in discharge of his duty, rather he after having taken note of the fact that petitioner was driving the vehicle without wearing seat belt, challaned him under Section 177 of Motor Vehicles Act, mere protesting or using intemperate language without an overt act, will not be an offence punishable under Section 186 of the Indian Penal Code. Passive conduct without disturbing a public servant in discharge of his functions or duties will not amount to voluntary obstructing a public servant within the meaning of Section 186 of the Indian Penal Code.

22. Reliance is placed upon judgment passed by this Court in **Surinder Singh Chauhan v. State of Himachal Pradesh,2002 1 CurLJ 332**.

23. Consequently, in view of the aforesaid discussion as well as law taken note hereinabove, Kalandra under Section 186 of Indian Penal Code filed by the Police Station Sunni, District Shimla, H.P., as well as consequent proceedings, if any, pending adjudication in the

court of learned Judicial Magistrate First Class, Court No. I, Shimla, District Shimla, HP in Kalandra No.1 of 2020 titled as *State Vs. Sita Ram Sharma,* are quashed and set aside. Accused is acquitted of the charges framed against him.

The petition stands disposed of in the aforesaid terms, alongwith all pending applications.

(Sandeep Sharma),
Judge

June 19, 2024
Sunil/manjit