IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CrMMO No. 339 of 2020
Reserved on: 22.02.2021.
Date of Decision: 22.02.2021.

Anu Tuli Azta **...Petitioner.**

Versus

State of H.P. **...Respondent.**

Coram:
The Hon'ble Mr. Justice Anoop Chitkara, Judge.

Whether approved for reporting?[1] YES

For the petitioner: **Ms. Anita, Advocate.**

For the respondent: **Mr. Nand Lal Thakur, Additional Advocate General, Mr. Ram Lal Thakur, Deputy Advocate General, Mr. Rajat Chauhan, Law Officer.**

THROUGH VIDEO CONFERENCE

FIR No.	Dated	Police Station	Sections
164/2019	22.07.2019	Police Station (West), Shimla	341, 143, 147, 149, 353, 504, and 506 IPC

Anoop Chitkara, Judge.

The Petitioner, who is an Advocate and member of the Shimla District Courts Bar Association, has come up before this Court seeking quashing of FIR, registered for wrongful restraint, forming unlawful assembly, rioting, indulging in criminal force to deter public servants from discharging their duties, intentional insult to breach the peace, and criminal intimidation. It has been averred that the lawyers were protesting peacefully against restricting the entries to the District Court complex Shimla from a shorter route, forcing them to take a longer way, which had traffic jams, resulting in a delay in attending to the Courts. The Police registered a concocted FIR due to wreaking vengeance with malicious intentions to scuttle the

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

agitation. The Police arraigned her as an accused because she was supporting their cause.

2. The gist of the facts apposite to decide the present petition is as follows:

(a) The Police Station West, Shimla, registered the FIR mentioned above based on Inspector Dinesh Kumar's complaint, the SHO of the said Police Station.
(b) On July 22, 2019, Inspector Dinesh Kumar informed his Police Station that he received telephonic information from ASI Ramesh Chand, who was deputed on Traffic duty, that a large number of Advocates had assembled at Boileauganj Bazar, of Shimla town. These advocates insisted on taking their vehicles through the restricted road, leading to Boileuganj via Chaura Maidan, though they did not have any valid permits to do so.
(c) On this, the complainant SHO reached the spot of agitation. He noticed many advocates assembled at the place, and the Petitioner was one of them. The agitated Advocates had blocked the road by stopping their vehicles in the middle of the road.
(d) The SHO asked them the reasons for creating the traffic jam by halting their vehicles. On this, the lawyers asserted to drive their cars through the restricted road itself. After this, the SHO asked the lawyers to show the permits for driving on the restricted road, upon which the lawyers replied that he could not stop them from driving their vehicles, and at the most, he could challan their cars. After that, these lawyers turned very aggressive and started pushing the police officials, inflicted fist blows, and hurled abuses on them. On this, the complainant tried to calm them down, but they kept on hurling abuses, gave pushes, fist blows, threatened to burn the police station, and told the SHO that they would teach him a lesson never forget in his life. After that, these lawyers sat in protest at the spot and raised slogans.
(e) After this, the SHO, Inspector Dinesh Kumar, directed the Police Station to register FIR against the lawyers and named the petitioner as the person present at the spot.

3. Learned Counsel for the petitioner contends that even if all allegations recorded in FIR and investigation are hypothetically accepted to be true and correct, still such allegations fail to make out any prima facie case against the petitioner. Thus, FIR and proceedings be quashed.

4. On the contrary, Learned Additional Advocate General contends that although this Court in **Rajiv Jiwan** versus **State of HP., CrMMO No. 51 of 2020**, had quashed an FIR of one of the co-accused, still it was quashed after consideration of material collected against such accused, and the petitioner has to make out a separate

case for quashing, without placing any reliance upon the judgment passed in **Rajiv Jiwan's** case.

STAGE OF QUASHING FIR:

5. In **Ashok Chaturvedi v Shitul H. Chanchani**, 1998(7) SCC 698, Hon'ble Supreme Court holds that the determination of the question as regards the propriety of the order of the Magistrate taking cognizance and issuing process need not necessarily wait till the stage of framing the charge. The Court holds,

> …. This argument, however, does not appeal to us inasmuch as merely because an accused has a right to plead at the time of framing of charges that there is no sufficient material for such framing of charges as provided in Section 245 of the Criminal Procedure Code, he is debarred from approaching the court even at an earliest (sic earlier) point of time when the Magistrate takes cognizance of the offence and summons the accused to appear to contend that the very issuance of the order of taking cognizance is invalid on the ground that no offence can be said to have been made out on the allegations made in the complaint petition. It has been held in a number of cases that power under Section 482 has to be exercised sparingly and in the interest of justice. But allowing the criminal proceeding to continue even where the allegations in the complaint petition do not make out any offence would be tantamount to an abuse of the process of court, and therefore, there cannot be any dispute that in such case power under section 482 of the Code can be exercised.

6. In *Kunstocom Electronics (I) Pvt. Ltd. v. Gilt Pack Ltd. and another*, (2002) 2 SCC 383, Hon'ble Supreme Court holds as under:-

> 8..... ….There is no hard and fast rule that the objection as to cognizability of offence and maintainability of the complaint should be allowed to be raised only at the time of framing the charge.

7. In **Girish Sarwate v. State of A.P.**, 2005(1) R.C.R.(Criminal) 758, the Full Bench of Andhra Pradesh High Court observed that the High Court need not wait for completion of investigation and taking cognizance by the Magistrate.

JUDICIAL PRECEDENTS ON JURISPRUDENCE OF QUASHING:

8. The law is almost settled by larger benches judgments of Supreme Court that the offences, those are not listed as compoundable, under Section 320 CrPC, can also be compounded, and the procedure to follow would be by quashing the FIR, and consequent proceedings.

a) In **R.P. Kapur v State of Punjab**, **AIR 1960 SC 866**, a three-member Bench of Hon'ble Supreme Court holds,

> 6. …. … ...It is well established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Ordinarily, criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, the High Court would be justified in quashing the proceedings on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such case, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal Court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases, 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 manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under S. 561-A, the High Court would not

> embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under S. 561-A in the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point (Vide : In Re: Shripad G. Chandavarkar, AIR 1928 Bom 184, Jagat Chandra Mozumdar v. Queen Empress, ILR 26 Cal 786, Dr. Shankar Singh v. State of Punjab, 56 Pun LR 54 : (AIR 1954 Punj 193), Nripendra Bhusan Roy v. Gobina Bandhu Majumdar, AIR 1924 Cal 1018 and Ramanathan Chettiyar v. Sivarama Subramania, ILR 47 Mad 722 : (AIR 1925 Mad 39).

b) In **MadhavraoJiwaji Rao Scindia v Sambhajirao Chandrojirao Angre**, 1988 (1) SCC 692, a three judges' bench of the Hon'ble Supreme Court holds: -

> 7. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

c) A three Judges bench of Hon'ble Supreme Court, in **Gian Singh v. State of Punjab**, 2012(10) SCC 303, has settled the law on quashing on account of compromise/compounding, in the following terms:

> [53]. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, 'nothing in this Code' which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of

such power is provided in Section 482 itself i.e., to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that Section 482 confers no new powers on High Court; it merely safeguards existing inherent powers possessed by High Court necessary to prevent abuse of the process of any Court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

[57]. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

[58]. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime- doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under Indian Penal Code or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which

> overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed."

d) In **Parbatbhai Aahir v State of Gujarat**, (2017) 9 SCC 641, a three Judges Bench of Hon'ble Supreme Court, laid down the broad principles for quashing of FIR, which are reproduced as follows:

> 16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:
> 16 (i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;
>
> 16 (ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.
>
> 16 (iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;
>
> 16 (iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

> 16 (v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;
>
> 16 (vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;
>
> 16 (vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;
>
> 16 (viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;
>
> 16 (ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and
>
> 16 (x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.

ANALYSIS AND REASONING:

9. The FIR nowhere mentions the role of the petitioner. Even if this Court presumes the petitioner present at the spot, it would still not lead to an automatic

inference of her acting with a common object with those who had inflicted fist blows, hurled abuses, and threatened the SHO, and also threatened to burn the Police Station.

10. Although the police got a video recording of the incident, the State did not refer to the said portion of the disk at which time frame, the Petitioner was video recorded inflicting fist blows, hurling abuses, or threatening the SHO, or threatening to burn the Police station.

11. In the complaint, the SHO did not mention the time, and there is no explanation of its non-mentioning. Pinpointing the time was crucial because the petitioner could have taken the plea of alibi.

12. Even if this Court believes all the allegations in FIR as truthful, still there is no allegation against the petitioner of participating in any criminal act.

13. Mere presence at the spot in the demonstration would not invite criminal act in the facts and nature of allegations made in the present FIR.

14. Holding peaceful processions, raising slogans, would not be and cannot be an offence under India's Constitution.

15. Therefore, naming and arraigning the petitioner as an accused is a gross abuse of the process of law. If proceedings are allowed to be continued, it shall amount to the miscarriage of Justice.

16. In the cumulative effect of all the factors mentioned above, and in the peculiar facts and circumstances, it is one of the exceptional cases, where this Court should exercise its inherent jurisdiction under Section 482 of the Code of Criminal Procedure.

17. Given above, this is a fit case where the inherent jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure is invoked. This Court has inherent powers under Section 482 of the Code of Criminal Procedure to interfere in this kind of matter. Given the entirety of the case and judicial precedents, I am of the considered opinion that the continuation of these proceedings will not suffice any fruitful purpose whatsoever.

18. In **Himachal Pradesh Cricket Association v State of Himachal Pradesh**, 2018 (4) Crimes 324, Hon'ble Supreme Court holds as under: -

> [47]. As far as Writ Petition (Criminal) No. 135 of 2017 is concerned, the appellants came to this Court challenging the order of cognizance only because of the reason that matter was already pending as the appellants had filed the Special Leave Petitions against the order of the High Court rejecting their petition for quashing of the FIR/Chargesheet. Having regard to these peculiar facts, writ petition has also been entertained. In any case, once we hold that FIR needs to be quashed, order of cognizance would automatically stands vitiated."

20. Consequently, this petition is allowed, and the FIR No.164/2019, dated 22.07.2019, registered in Police Station (West), Shimla, under Sections 341, 143, 147, 149, 353, 504, and 506 IPC, is quashed qua the petitioner. Since FIR has been quashed, all the consequential proceedings are also quashed and set aside qua the petitioner. Petition is allowed in aforesaid terms. All pending application(s), if any, stand closed.

Petition allowed.

Anoop Chitkara,
Judge.

February 22, 2021 (*ps*).