

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****Cr.MMO No.326 of 2026
Date of Decision: 20.07.2026**

Rakesh Thakur		Petitioner
	Versus	
State of H.P.		Respondent

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.Whether approved for reporting? ¹

For the Petitioner: Mr. Sushil Chauhan, Advocate.**For the Respondent:** Mr. Rajan Kahol & Mr. Vishal Panwar,
Additional Advocates General with Mr. Ravi
Chauhan & Mr. Anish Banshtu, Deputy
Advocates General.

Sandeep Sharma, Judge(oral):

By way of the instant petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, prayer has been made on behalf of the petitioner for quashing and setting aside the FIR No. 246/2013 dated 02.12.2023, registered under Section 27 of ND & PS Act at Police Station West (Boileauganj), Shimla, District Shimla, Himachal Pradesh, as well as consequent proceedings pending adjudication competent Court of law qua the petitioner.

2. Precisely, the facts of the case as emerge from the pleadings as well as other material adduced on record by the respective parties are that FIR No. 246/2013 dated 02.12.2023, was registered under Section 27 of ND & PS Act at Police Station detailed

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



hereinabove, against the petitioner for the alleged consumption of a cigarette containing charas and for being found in possession of one smoked cigarette containing a mixture of charas.

3. After completion of investigation, Police presented challan in the competent Court of law, but before same could be taken to its logical end, petitioner has approached this Court in the instant proceedings for quashing of FIR as well as consequent proceedings pending in the competent Court of law on the ground that no case much less under Section 27 of ND & PS Act is made out against the petitioner.

4. Mr. Sushil Chauhan, learned counsel for the petitioner, states that both the independent witnesses to the recovery have turned hostile. He states that at the time of production of case property, i.e. cigarettes, same were found to be empty, and as such, case of the prosecution is bound to fail, and no fruitful purpose would be served by permitting the FIR sought to be quashed to continue, rather, it would unnecessarily subject the petitioner to the ordeal of a protracted trial, which is otherwise bound to fail.

5. Pursuant to notices issued in the instant proceedings, respondent-State has filed status report, wherein facts, as have been noticed hereinabove, have not been disputed, rather stand admitted. Mr. Anish Banshtu, learned Deputy Advocate General, states that though recovery witnesses have turned hostile, but in their cross-



examination, they have admitted their signatures on the recovery memo. He further states that though at the time of production of case property before the court below, cigarettes were found empty, but there is ample evidence adduced on record to suggest that at the time of recovery, those were filled with charas.

6. I have heard learned counsel of the parties and gone through the record carefully.

7. 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 upon the scope and competence of this Court to quash the criminal proceedings, while exercising power under Section 482 of Cr.PC (now 528 of BNSS).

8. A three-Judge Bench of the Hon'ble Apex Court in case titled **State of Karnataka v. L. Muniswamy and others**, 1977 (2) SCC 699, held that High Court while exercising power under Section 482 Cr.PC is entitled to quash the proceedings, 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.

9. Subsequently, in case titled **State of Haryana and others v. Bhajan Lal and others**, 1992 Supp (1) SCC 335, the



Hon'ble Apex Court, while elaborately discussing the scope and competence of High Court to quash criminal proceedings under Section 482 Cr.PC laid down certain principles governing the jurisdiction of High Court to exercise its power. After passing of aforesaid judgment, issue with regard to exercise of power under Section 482 Cr.PC, again came to be considered by the Hon'ble Apex Court in case bearing Criminal Appeal No.577 of 2017 (arising out of SLP (CrL.) No. 287 of 2017) titled ***Vineet Kumar and Ors. v. State of U.P. and Anr.***, wherein it has been held that saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose i.e. court proceedings ought not be permitted to degenerate into a weapon of harassment or persecution.

10. The Hon'ble Apex Court in **Prashant Bharti v. State (NCT of Delhi)**, (2013) 9 SCC 293, relying upon its earlier judgment titled as **Rajiv Thapar and Ors v. Madan Lal Kapoor**, (2013) 3 SCC 330, reiterated that High Court has inherent powers under Section 482 Cr.PC., to quash the proceedings 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. In the aforesaid judgment, the Hon'ble Apex Court concluded that while exercising its inherent jurisdiction under Section 482 of the Cr.PC, Court exercising such



power must 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 overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. Besides above, the Hon'ble Apex Court further held that 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. In the aforesaid judgment titled as 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."

11. It is quite apparent from the bare perusal of aforesaid judgments passed by the Hon'ble Apex Court from time to time that 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/her due to private and personal grudge, High Court while exercising power under Section 482 Cr.PC can proceed to quash the proceedings.

12. The Hon'ble Apex Court in case titled **Anand Kumar Mohatta and Anr. v. State (Government of NCT of Delhi)** Department of Home and Anr, AIR 2019 SC 210, has held that abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation and as such, the abuse of law or miscarriage of justice can be rectified by the court while exercising power under Section 482 Cr.PC. The relevant paras of the judgment are as under:

16. Even otherwise it must be remembered that the provision invoked by the accused before the High Court is Section 482 Cr. P.C and that this Court is hearing an appeal from an order under Section 482 of Cr.P.C. Section 482 of Cr.P.C reads as follows:-

"482. Saving of inherent power of the High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

17. There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High court can exercise jurisdiction under Section 482 of Cr.P.C even when the discharge application is pending with the trial court (G. Sagar Suri and Anr. V. State of U.P. and Others, (2000) 2 SCC 636 (para 7), Umesh Kumar v. State of Andhra Pradesh and



Anr. (2013) 10 SCC 591 (para 20). Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced, and the allegations have materialized into a charge sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court.”

13. The Hon’ble Apex Court in case titled **Pramod Suryabhan Pawar v. The State of Maharashtra and Anr**, (2019) 9 SCC 608, has elaborated the scope of exercise of power under Section 482 Cr.PC, the relevant para whereof reads as under:-

*“7. Section 482 is an overriding section which saves the inherent powers of the court to advance the cause of justice. Under Section 482 the inherent jurisdiction of the court can be exercised (i) to give effect to an order under the CrPC; (ii) to prevent the abuse of the process of the court; and (iii) to otherwise secure the ends of justice. The powers of the court under Section 482 are wide and the court is vested with a significant amount of discretion to decide whether or not to exercise them. The court should be guarded in the use of its extraordinary jurisdiction to quash an FIR or criminal proceeding as it denies the prosecution the opportunity to establish its case through investigation and evidence. These principles have been consistently followed and re-iterated by this Court. In *Inder Mohan Goswami v State of Uttaranchal*, this Court observed.*

“23. This Court in a number of cases has laid down the scope and ambit of courts’ powers under Section 482 Cr.P.C. Every High Court has inherent powers to act ex debito justitiae to do real and substantial justice, for the administration of which



alone it exists, or to prevent abuse of the process of the court.

Inherent power under Section 482 CrPC can be exercised:

- (i) to give effect to an order under the Code;*
- (ii) to prevent abuse of the process of the court, and*
- (iii) to otherwise secure the ends of justice.*

24. Inherent powers under Section 482 Cr.P.C though wide have to be exercised sparingly, carefully and with great caution and only when 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.”

8. Given the varied nature of cases that come before the High Courts, any strict test as to when the court’s extraordinary powers can be exercised is likely to tie the court’s hands in the face of future injustices. This Court in State of Haryana v Bhajan Lal conducted a detailed study of the situations where the court may exercise its extraordinary jurisdiction and laid down a list of illustrative examples of where quashing may be appropriate. It is not necessary to discuss all the examples, but a few bear relevance to the present case. The court in Bhajan Lal noted that quashing may be appropriate where, (2007) 12 SCC 1 1992 Supp (1) SCC 335

“102. (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).

.....

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

In deciding whether to exercise its jurisdiction under Section 482, the Court does not adjudicate upon the veracity of the facts alleged or enter into an appreciation of competing evidence presented. The limited question is whether on the face of the FIR, the allegations constitute a cognizable offence. As this Court noted in Dhruvaram Murlidhar Sonar v State of Maharashtra, 2018 SCC OnLine SC3100 (“Dhruvaram Sonar”):

“13. It is clear that for quashing proceedings, meticulous analysis of factum of taking cognizance of an offence by the Magistrate is not called for. Appreciation of evidence is also not permissible in exercise of inherent powers. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken, it is open to the High Court to quash the same in exercise of its inherent powers.”

14. Aforesaid law, clearly stipulates that court can exercise power under Section 482 of the Code of Criminal Procedure, to quash criminal proceedings, in cases, 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.

15. Now being guided by the aforesaid proposition of law laid down by the Hon’ble Apex Court, this Court would make an endeavor



to examine and consider the prayer made in the instant petition vis-à-vis factual matrix of the case.

16. It is true that on 02.12.2013, petitioner herein came to be booked for his having allegedly consumed cigarette containing charas and was found in possession of two unsmoked cigarettes containing a mixture of charas. Prosecution, with a view to prove the alleged recovery, examined two independent witnesses, i.e. PW-1 Sh. Sandeep Chauhan and PW-2 Sh. Ajay Kotwal, but both of these witnesses have turned hostile as they did not support the case of the prosecution. Though, statements of aforesaid witnesses adduced on record reveal that they admitted their signatures on the recovery memo, but they categorically stated that their signatures had been obtained on blank papers. Apart from above, this Court finds that case property, i.e. Four Square cigarette packets and two and a half cigarettes, exhibited as Ext. MO-3/PW-2, Ext. MO-4/PW-2 and Ext. MO-5/PW-2, at the time of their production in the Court below, were found to be empty. Since no contraband was found in the case property, as detailed hereinabove, coupled with fact that two independent witnesses to the recovery have already resiled from their statements, case of prosecution is bound to fail in all probabilities and no fruitful purpose would be served in case FIR sought to be quashed is permitted to sustain, rather that would unnecessarily cause



hardship to the petitioner, who has been otherwise facing this trial for more than 10 years.

17. Having scanned the entire material adduced on record, vis-à-vis prayer made in the instant petition, this Court is persuaded to agree with learned counsel for the petitioner that this Court, while exercising power under Section 482 Cr.P.C., may proceed to quash the FIR/challan submitted against the petitioner, because continuance thereof would be sheer abuse of process of law, since, for the reasons stated herein above, case of prosecution is bound to fail against the petitioner in all probabilities. Otherwise also, in case prayer made on behalf of the petitioner is not accepted, he would be subjected to unnecessary ordeal of facing protracted trial, which otherwise is bound to fail.

18. Consequently, in view of detailed discussion made herein above and law taken into consideration, present petition is allowed. FIR No. 246/2013 dated 02.12.2023, registered under Section 27 of ND & PS Act at Police Station West (Boileauganj), Shimla, District Shimla, Himachal Pradesh, as well as consequent proceedings, are quashed and set aside qua the petitioner. The petitioner is discharged henceforth. Pending applications, if any, stand disposed of.

**(Sandeep Sharma),
Judge**

July 20, 2026
(sunil)