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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO No. 1092 of 2024
Date of Decision: 20.07.2026

Dildar Ali Batt and Others ....**Petitioners**

Versus

State of H.P. and Another ....**Respondents**

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? [1] ***Yes.***

For the Petitioners:	Mr. Aman Parth Sharma and Mr. Rishabh Negi, Advocates.
For the Respondent:	Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocates General, with Mr. Ravi Chauhan and Mr. Anish Banshtu, Deputy Advocates General, for State.

Sandeep Sharma, J. *(Oral)*

By way of instant petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, prayer has been made on behalf of the petitioners for quashing FIR No.82 of 2017, dated 29.07.2017, registered at Police Station Tissa, District Chamba, under Sections 452, 353, 332, 143, 147, 149, 504 and 506 of Indian Penal Code, as well as the consequent proceedings pending in the competent Court of law.

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 Respondent No.2, Mr. Rajdeen, who at the relevant time was working as

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

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Officiating Principal at Government Senior Secondary School Khushinagar, Churah, District Chamba, made a complaint at Police Station Tissa, pursuant to which FIR sought to be quashed came to be registered, alleging therein that on 29.07.2017, pursuant to complaint of sexual harassment of a female student lodged against one teacher, namely Tek Chand, who was in Police custody, public at large organized a protest march with hoardings in their hands and raised slogans, asking the students to leave classes, which caused panic in the school premises. Complainant also alleged that some of the teachers were given beatings. He alleged that though he tried his best to maintain peace and save teachers from the mob, but yet teachers, namely Kesari Singh, Chatar Singh, Bhawani Sharma, and Asha Kumari, were given beatings. Sub-Divisional Magistrate, Churah, also reached the spot, but mob didn't pacify, rather demanded that the teachers who are on leave may also be called. Petitioners, on the instructions of Sub-Divisional Magistrate, Churah, called teachers who were on leave. Teachers, namely Bhawani Sharma, Kesari Singh, Surinder Singh and Shyam Lal, reached in school premises, as per directive of Principal, but they were also given beatings. In the afore background, FIR sought to be quashed came to be lodged against several persons, including petitioners herein.

3. Though, after completion of investigation, Police has already presented *Challan* in competent Court of law, but before same could be taken to its logical end, petitioners, who claim themselves to be innocent, have approached this Court in the instant proceedings for quashing of FIR on the

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ground that though they were part of the peaceful protest march, but never gave beatings to anyone.

4. Mr. Aman Parth Sharma, Advocate, duly assisted by Mr. Rishabh Negi, Advocate, representing the petitioners, vehemently argued that as per complaint made by complainant, petitioners, namely Dildar Ali Batt and Parvej Ali Batt, were standing with Sub-Divisional Magistrate, Churah, and they also attempted to save teachers from the mob. While making this Court peruse complaint as well as statement made by victims under Section 161 CrPC, Mr. Sharma further argued that no allegation, if any, of either being present in mob or of beating, if any, ever came to be made against respondent No.3, Hasan Mohammad @ Harun, but yet he came to be arraigned as an accused. While making this Court peruse medical evidence adduced on record, Mr. Sharma further argued that victim, at the time of their medical examination, nowhere revealed the name of the petitioners, rather they specifically named certain persons who had allegedly given them beatings, and as such, there was no occasion, if any, for Police to present *Challan* against present petitioners. He submitted that since for the reasons, taken note hereinabove, case of the prosecution is bound to fail in all probabilities, no fruitful purpose would be served in case FIR sought to be quashed is permitted to sustain, rather petitioners would be unnecessarily put to ordeal of protracted trial, which is otherwise bound to fail.

5. Mr. Rajan Kahol, learned Additional Advocate General, while justifying the impugned action of lodging FIR and presenting *Challan* in competent

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Court of law, stated that since it is not in dispute that petitioners herein were part of mob which caused ruckus and gave beatings to the teachers, no illegality can be said to have been committed by the investigating agency while arraigning petitioners herein as accused. He further submitted that otherwise also, factum with regard to administration of injury or beatings, if any, at the behest of petitioners herein to the victims can only be ascertained by a competent Court of law in totality of evidence led on record by prosecution, and as such, any direction of this Court inasmuch as quashing of FIR would virtually amount to preempting prosecution to prove its case in accordance with law, which is not permissible under law.

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

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 the scope and competence of this Court to quash the criminal proceedings while exercising power under Section 482 of Cr.PC.

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

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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 to be permitted to degenerate into a weapon of harassment or persecution.

10. Reliance is placed upon judgment of 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.

11. In this regard, reliance is place *upon* ***Amish Devgan vs Union of India and Ors, (2021) 1 SCC 1***, wherein the Hon'ble Apex Court held as under:

> "(vii) Conclusion and relief

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116. At this stage and before recording our final conclusion, we would like to refer to decision of this Court in Pirthi Chand [State of H.P. v. Pirthi Chand, (1996) 2 SCC 37 : 1996 SCC (Cri) 210] wherein it has been held : (SCC pp. 44-45, paras 12-13)

> "12. It is thus settled law that the exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinize the FIR/charge-sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigate into cognizable offence. After the investigation is conducted (sic concluded) and the charge-sheet is laid, the prosecution produces the statements of the witnesses recorded under Section 161 of the Code in support of the charge-sheet. At that stage it is not the function of the court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance with the provisions which are considered mandatory and effect of its non-compliance. It would be done after the trial is concluded. The court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether court could take cognizance of the offence on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out, no further act could be done except to quash the charge-sheet. But only in exceptional cases i.e. in rarest of rare cases of mala fide initiation of the proceedings to wreak private vengeance issue of process under Criminal Procedure Code is availed of. A reading of a [Vide Corrigendum dated 20-3-1996 issued from Residential Office of Hon'ble Mr Justice K. Ramaswamy.] complaint or FIR itself does not disclose at all any cognizable

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offence — the court may embark upon the consideration thereof and exercise the power."

12. Recently, Hon'ble Apex Court in ***Abhishek Singh vs Ajay Kumar and Ors.***, ***(2025) SCC OnLine SC 1313***, held as under:

> "9. The scope of the Court's power to quash and set aside proceedings is well-settled to warrant any restatement. While the arguments advanced have the potential to raise many issues for consideration, we must first satisfy ourselves as to the propriety of the exercise of such power by the High Court. The task of the High Court, when called upon to adjudicate an application seeking to quash the proceedings, is to see whether, prima facie, an offence is made out or not. It is not to examine whether the charges may hold up in the Court. In doing so, the area of action is circumscribed. In Rajeev Kourav v. Baisahab, it was held:
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> > "8. It is no more res integra that exercise of power under Section 482 CrPC to quash a criminal proceeding is only when an allegation made in the FIR or the charge-sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 CrPC is to prevent the abuse of process of any court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding."
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> > 15. In that view of the matter, we hold that the High Court had improperly quashed the proceedings initiated by the appellant.

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It stands clarified that we have not expressed any opinion on the matter, and the guilt or innocence of the respondents has to be established in the trial, in accordance with the law. The proceedings out of the subject FIR, mentioned in paragraph 2 are revived and restored to the file of the concerned Court."

13. Reliance in this regard is also placed upon judgment passed by the Hon'ble Apex Court in **B.N. John Vs. State of U.P., 2025 SCC OnLine SC 7**, which reads 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 summarized some of the principles under which FIR/complaints/criminal cases could be quashed in the following words:
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>> "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.

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(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.

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(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."

14. Reliance is further placed upon the judgment passed by the Hon'ble Apex Court in ***Ajay Malik v. State of Uttarakhand, 2025 SCC OnLine SC 185***, which reads as under:

"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

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> 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.
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> 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 pre-empting 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)

15. 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.

16. 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.

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17. Having heard learned counsel representing the parties and perused material available on record, this Court finds that facts, as have been noticed hereinabove are not in dispute, rather stand duly admitted by respondents in their reply. It is not in dispute that on account of sexual assault of one school child, residents of area had organized protest march on the date of alleged incident, and they all had gone towards Government Senior Secondary School Khushinagar, Churah, District Chamba. Some of the disgruntled elements, after having reached school premises, started creating ruckus, and they also allegedly gave beatings to the teachers, namely Bhawani Sharma, Kesari Singh, Chatar Singh, and Asha Kumari. Though complainant attempted to pacify the protestors, but they, in presence of Sub-Divisional Magistrate, Churah, demanded for summoning of those teachers who were on leave on that day. On the instructions of Principal, school teachers, namely Kesari Singh and Bhawani Sharma, came back to school on that day, but the moment they reached, they were given beatings. In the aforesaid background, FIR sought to be quashed came to be lodged against several persons, including petitioners.

18. In nutshell, case of petitioner Nos.1 and 2 is that though they had gone in protest march, but never gave beatings to any of the teachers, rather they attempted to save the teachers. Careful perusal of complaint, on the basis of which FIR came to be lodged, clearly reveals that petitioners, namely Dildar Ali Batt and Pavej Ali Batt, were seen standing next to Sub-Divisional

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Magistrate, Churah, by complainant, and as per complainant, both these persons attempted to save teachers from the beatings of persons in the mob. Documents adduced on record, i.e. MLCs, clearly reveal that teachers, namely Bhawani Sharma, Kesari Singh, Chatar Singh, and Asha Kumari, specifically disclosed the name of person who had allegedly given them beatings. They nowhere mentioned the names of all the petitioners, rather, this Court finds that name of petitioner No.3, Hasan Mohammad @ Harun, neither appeared in complaint nor any of the teachers who were allegedly given beatings alleged that he gave them beatings.

19. Mr. Rajan Kahol, learned Additional Advocate General, vehemently argued that factum of not giving beatings, if any, by petitioners to the teachers named hereinabove may not be relevant, especially when it is not in dispute that petitioners were part of protest march, which ultimately created ruckus in school premises and gave beatings. However, having carefully perused complaint lodged at the behest of respondent No.2, Rajdeen, wherein he specifically stated that petitioner No.1, Dildar Ali Batt and petitioner No.2, Parvej Ali Batt, were standing near to Sub-Divisional Magistrate, Churah, and they also attempted to save Bhawani Sharma and Kesari Singh, who were allegedly given beatings by the mob, this Court is not persuaded to accept afore submission of learned Additional Advocate General. It is well-settled that mere presence at the crime scene would not ipso facto render a person member of the unlawful assembly to book him under Section 149 IPC. Liability would shift to the bystander only when he shared the common object

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with the unlawful assembly. Reliance in this regard is placed upon judgment passed by Hon'ble Apex Court in Criminal Appeal No.1187 of 2014, dated 07.10.2025, titled ***Zainul vs. State of Bihar***. Relevant Para of afore judgment read as under:

> "44. There is no gainsaying that appreciation of evidence primarily falls within the domain of the trial court, and the first appellate court. However, if the courts below could be said to have faltered by overlooking material aspects resulting in the miscarriage of justice, this Court in exercise of its jurisdiction under Article 136 is dutybound to intervene and look into the matter closely.
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> **A. Interpretation of Section 149 of the Indian Penal Code**
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> 45. Albeit the essentials of Section 149 of the IPC are oft-repeated and firmly established, they are reiterated herein for the sake of convenience:
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> i. There must be an assembly of five or more persons;
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> ii. An offence must be committed by any member of that unlawful assembly;
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> iii. The offence committed must be in order to attain the common object of that assembly, or
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> iv. The members of the assembly must have the knowledge that the particular offence is likely to be committed in order to attain the common object.
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> 46. Section 149 of the IPC stipulates that if an offence is committed by any member of an unlawful assembly (of 5 or more persons) in prosecution of the common object (as defined in Section 141 of the IPC) of that assembly, or if the members of the assembly knew that the said offence is likely to be committed in prosecution of the said common object, every person who, at the time of committing that offence, was a member of that assembly, will be guilty of that offence.
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> 47. The first limb of the provision envisages the **commission** of an offence by a member of an unlawful assembly in order to attain the common object of that assembly. Whereas, the second limb of the provision encapsulates **knowledge** on the part of a member of the unlawful assembly qua the

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likelihood of such offence being committed in order to attain the common object.

48. The distinction between the two limbs of Section 149 of the IPC was elucidated in the decision of **Mizaji v. State of U.P.**, reported in **1958 SCC OnLine SC 95**. The relevant observations are reproduced hereinbelow:-

> "6. This section has been the subject-matter of interpretation in the various High Courts of India, but every case has to be decided on its own facts. *The first part of the section means that the offence committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. It is not necessary that there should be a preconcert in the sense of a meeting of the members of the unlawful assembly as to the common object; it is enough if it is adopted by all the members and is shared by all of them*. In order that the case may fall under the first part the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members. *Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 149 if it can be held that the offence was such as the members knew was likely to be committed. The expression 'know' does not mean a mere possibility, such as might or might not happen*. For instance, it is a matter of common knowledge that when in a village a body of heavily armed men set out to take a woman by force, someone is likely to be killed and all the members of the unlawful assembly must be aware of that likelihood and would be guilty under the second part of Section 149. Similarly, if a body of persons go armed to take forcible possession of the land, it would be equally right to say that they have the knowledge that murder is likely to committed if the circumstances as to the weapons carried and other conduct of the members of the unlawful assembly clearly point to such knowledge on the part of them all. There is a great deal to be said for the opinion of Couch, C.J., in Sabid Ali case [(1873) 20 WR 5 Cr] that when an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful

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assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there may be cases which would come within the second part, but not within the first. The distinction between the two parts of Section 149, Indian Penal Code cannot be ignored or obliterated. In every case it would be an issue to be determined whether the offence committed falls within the first part of Section 149 as explained above or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part."

(Emphasis supplied)

49. The expression "in prosecution of the common object" means that the offence committed must be directly connected with the common object of the assembly, or that the act, upon appraisal of the evidence, must appear to have been done with a view to accomplish that common object. In **Charan Singh v. State of U.P.**, reported in **(2004) 4 SCC 205**, this Court held that the test for determining the "common object" of an unlawful assembly must be assessed in light of the conduct of its members, as well as the surrounding circumstances. It can be deduced from the nature of the assembly, the weapons carried by its members, and their conduct before, during, or after the incident. The relevant observations read as thus:-

> "13. [...]Section 149 IPC has its foundation on constructive liability which is the sine qua non for its operation. The emphasis is on the common object and not on common intention. ***Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141***. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149. *The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141*. It cannot be laid down as a general proposition of law that unless an overt act is proved against

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a person, who is alleged to be a member of an unlawful assembly, it cannot be said that he is a member of an assembly. *The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141. The word "object" means the purpose or design and, in order to make it "common", it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it*. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression "in prosecution of common object" as appearing in Section 149 has to be strictly construed as equivalent to "in order to attain the common object". *It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter*. Members of an unlawful assembly may have community of object up to a certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149 IPC may be different on different members of the same assembly.

14. "Common object" is different from a "common intention" as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. *The "common object" of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered*

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from the course of conduct adopted by the members of the assembly. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to Section 141, an assembly which was not unlawful when it was assembled, may subsequently become unlawful. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words, it can develop during the course of incident at the spot eo instanti."

(Emphasis supplied)

50. To put it briefly, Section 149 of the IPC makes all the members of an unlawful assembly constructively liable when an offence is committed by any member of such assembly with a view to accomplish the common object of that assembly or the members of the assembly knew that such an offence was likely to be committed. However, such liability can be fastened only upon proof that the act was done in pursuance of a common object. The essentials of Section 149 were succinctly explained by the Constitution Bench in the decision of **Mohan Singh v. State of Punjab**, reported in **AIR 1963 SC 174**. It reads thus:-

"8. The true legal position in regard to the essential ingredients of an offence specified by Section 149 are not in doubt. *Section 149 prescribes for vicarious or constructive criminal liability for all members of an unlawful assembly where an offence is committed by any member of such an unlawful assembly in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object. It would thus be*

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<u>noticed that one of the essential ingredients of Section 149 is that the offence must have been committed by any member of an unlawful assembly, and Section 141 makes it clear that it is only where five or more persons constituted an assembly that an unlawful assembly is born, provided, of course, the other requirements of the said section as to the common object of the persons composing that assembly are satisfied</u>. In other words, it is an essential condition of an unlawful assembly that its membership must be five or more.[…]"

(Emphasis supplied)

51. Undoubtedly, once the existence of a common object amongst the members of an unlawful assembly is established, it is not imperative to prove that each member committed an overt act. The liability under this provision is attracted once it is certain that an individual had knowledge that the offence committed was a probable consequence in furtherance of the common object, thereby rendering him a "member" of the unlawful assembly.

52. While ascertaining this fact, it is of utmost importance to consider whether the assembly consisted of some persons who were merely passive onlookers who had joined the assembly as a matter of idle curiosity, without the knowledge of the common object of the assembly, since such persons cannot be said to be members of the unlawful assembly. We say so because, the nucleus of Section 149 is "common object".

a. Innocent Bystander v/s Member of an Unlawful Assembly

53. Once the two broad essentials of Section 149 are fulfilled, i.e., (1) an offence is committed by any member of an unlawful assembly in prosecution of the common object, or (2) if the members of the assembly knew that the said offence is likely to be committed in prosecution of the said common object, every person who at the at the time of commission of the offence was a member of the assembly is to be held guilty of that offence.

54. At the same time, mere presence at the scene does not ipso facto render a person a member of the unlawful assembly, unless it is established that such an accused also shared its common object. A mere bystander, to whom no specific role is attributed, would not fall within the ambit of Section 149 of the IPC. The prosecution has to establish, through reasonably direct or

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indirect circumstances, that the accused persons shared a common object of the unlawful assembly. The test to determine whether a person is a passive onlooker or an innocent bystander is the same as that applied to ascertain the existence of a common object. The existence of a common object is to be inferred from the circumstances of each case, such as:

a. the time and place at which the assembly was formed;

b. the conduct and behaviour of its members at or near the scene of the offence;

c. the collective conduct of the assembly, as distinct from that of individual members;

d. the motive underlying the crime;

e. the manner in which the occurrence unfolded;

f. the nature of the weapons carried and used;

g. the nature, extent, and number of the injuries inflicted, and other relevant considerations.

i. Rule of Prudence in Convicting Members of an Unlawful Assembly

55. This Court, as a matter of caution, has enunciated parameters to safeguard innocent spectators or passive onlookers from being convicted merely on account of their presence. This cautionary rule, however, does not dilute the doctrine of constructive liability, under which proof of an overt act by each individual is not indispensable. Where the presence of a large number of persons is established and many are implicated, prudence mandates strict adherence to this rule of caution.

56. In **Masalti v. State of Uttar Pradesh**, reported in **1964 SCC OnLine SC 30**, 40 persons were charged with having committed several offences, the principal ones of which were under Section 302 r/w Section 149 of the IPC. The accused persons were alleged to be armed with guns, spears, swords, gandasas, and a lathi. While dealing with the oral evidences, the High Court observed that most of the witnesses belonged to the prosecution faction. Further, the evidence of all the witnesses gave an account of the incident in similar terms. The High Court held that unless at least four witnesses give a consistent account against the accused persons, the allegations against them cannot be said to have been proved beyond reasonable doubt. A Four-judge

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Bench of this Court approved the test applied by the High Court and held that a conviction in cases involving a large number of offenders and victims can be sustained only when supported by the consistent account of two or three, or more, reliable witnesses. The relevant observations are reproduced hereinbelow:-

> "16. Mr Sawhney also urged that the test applied by the High Court in convicting the appellants is mechanical. He argues that under the Indian Evidence Act, trustworthy evidence given by a single witness would be enough to convict an accused person, whereas evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction. ***That, no doubt is true; but where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. In a sense, the test may be described as mechanical; but it is difficult to see how it can be treated as irrational or unreasonable. Therefore, we do not think any grievance can be made by the appellants against the adoption of this test***. If at all the prosecution may be entitled to say that the seven accused persons were acquitted because their cases did not satisfy the mechanical test of four witnesses, and if the said test had not been applied, they might as well have been convicted. It is, no doubt, the quality of the evidence that matters and not the number of witnesses who give such evidence. *But sometimes it is useful to adopt a test like the one which the High Court has adopted in dealing with the present case*."
>
> (Emphasis supplied)

57. In **Muthu Naicker v. State of T.N.**, reported in **(1978) 4 SCC 385**, two factions in a village were involved in a dispute over the laying of pipelines. In the facts of the case, 28 persons were put to trial and 34 witnesses were examined, 6 of whom were injured eyewitnesses. The Court noted that whenever a fight amongst factions happens in rural

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society, numerous people appear on the scene as curious spectators. In such a case, mere presence in the assembly shall not be treated as evidence of the fact that the person was a member of the unlawful assembly. It further observed that the presence of those accused would be accepted as satisfactorily proved if there was reliable evidence of at least three witnesses against them. The relevant extracts have been reproduced hereinbelow:-

> "6. Where there is a melee and a large number of assailants and number of witnesses claim to have witnessed the occurrence from different places and at different stages of the occurrence and where the evidence as in this case is undoubtedly partisan evidence, the distinct possibility of innocent being falsely included with guilty cannot be easily ruled out. *In a faction-ridden society where an occurrence takes place involving rival factions it is but inevitable that the evidence would be of a partisan nature. In such a situation to reject the entire evidence on the sole ground that it is partisan is to shut one's eyes to the realities of the rural life in our country. Large number of accused would go unpunished if such an easy course is charted. Simultaneously, it is to be borne in mind that in a situation as it unfolds in the case before us, the easy tendency to involve as many persons of the opposite faction as possible by merely naming them as having been seen in the melee is a tendency which is more often discernible and is to be eschewed and, therefore, the evidence has to be examined with utmost care and caution.* It is in such a situation that this Court in Masalti v. State of U.P. [AIR 1965 SC 202 : (1964) 8 SCR 133 : (1965) 1 Cri LJ 226] adopted the course of adopting a workable test for being assured about the role attributed to every accused. To some extent it is inevitable that we should adopt that course.
>
> 7. *Before we proceed to look into the evidence it is also necessary to make it clear that whenever in uneventful rural society something unusual occurs, more so where the local community is*

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faction ridden and a fight occurs amongst factions, a good number of people appear on the scene not with a view to participating in the occurrence but as curious spectators. In such an event mere presence in the unlawful assembly should not be treated as leading to the conclusion that the person concerned was present in the unlawful assembly as a member of the unlawful assembly. Vicarious liability would attach to every member of the unlawful assembly if that member of the unlawful assembly either participates in the commission of the offence by overt act or knows that the offence which is committed was likely to be committed by any member of the unlawful assembly in prosecution of the common object of the unlawful assembly and becomes or continues to remain a member of the unlawful assembly. If one becomes a member of the unlawful assembly and his association in the unlawful assembly is clearly established, his participation in commission of the offence by overt act is not required to be proved if it could be shown that he knew that such offence was likely to be committed in prosecution of the common object of the unlawful assembly. But while finding out whether a person was a curious spectator or a member of an unlawful assembly it is necessary to keep in mind the life in a village ordinarily uneventful except for small squabbles where the village community is faction ridden and when a serious crime is committed people rush just to quench their thirst to know what is happening. In this case we will have occasion to point out that there are accused who are convicted with the aid of Section 149 of the IPC but in respect of whom we have no doubt in our minds that they were mere spectators and could hardly be said to be members of the unlawful assembly.

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39. *Now, turning to the case of the rest of the accused, we would ordinarily accept the presence of those accused as satisfactorily proved in respect of whom at least there is reliable evidence of*

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three witnesses and while analysing the evidence we would be rather slow to accept the evidence of PW 19 standing by itself who, as we would presently point out, has been materially contradicted by her statement under Section 161, CrPC Approaching the matter from this angle, we would briefly set out the evidence. The presence of Accused 6 is consistently spoken to by PWs 1, 19, 20 and 24 and that evidence establishes the fact that Accused 6 was a member of unlawful assembly and charge under Section 148 IPC is brought home to him.

xxx

54. Turning now to the Charges under Heads 4, 8, 10, 12, 14, 18, 20, 22, 24, 26 and 30, it must be pointed out that under these charges all the accused were convicted with the aid of Section 149 IPC in respect of specific offences committed by each individual accused in the case of one or the other prosecution witness. *Without elaborating we must at once say that in a case of this nature where a large crowd collected all of whom are not shown to be sharing the common object of the unlawful assembly, a stray assault by any one accused on any particular witness could not be said to be an assault in prosecution of the common object of the unlawful assembly so that the remaining accused could be imputed the knowledge that such an offence was likely to be committed in prosecution of the common object of the unlawful assembly*. To illustrate, when it is alleged that a certain accused pelted a stone and caused an injury to some one who came within the trajectory of the stone, could it be said that all other members of the unlawful assembly knew that such an offence would be committed? We are, therefore, not inclined to sustain the conviction of the accused for charges under Heads 4, 8, 10, 12, 14, 18, 20, 22, 24, 26 and 30 and accordingly the conviction of the accused under the

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aforementioned charges and the sentence imposed for the same are set aside and they are acquitted of these charges."

(Emphasis supplied)"

20. Reliance is also placed upon judgment passed by the Hon'ble Apex Court in ***Charan Singh and Others vs. State of U.P.***, (2004) 4 SCC 205, wherein it came to be ruled that mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object, and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, accused persons cannot be convicted with the help of Section 149. Relevant Para of afore judgment read as under:

"13. Coming to the others who were armed with double barrel guns and country made pistols, the question is regarding applicability of Section 149, IPC. Section 149, IPC has its foundation on constructive liability which is the sine qua non for its operation. The emphasis is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149. The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141. The word 'object'

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means the purpose or design and, in order to make it "common", it must be shared by all. In other words, the object should be common to the persons. Who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression 'in prosecution of common object' as appearing in Section 149 have to be strictly construed as equivalent to "in order to attain the common object". It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object upto certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149, IPC may be different on different members of the same assembly.

14. 'Common object' is different from a "common intention" as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The "common object" of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly,

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with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to Section 141, an assembly which was not unlawful when it was assembled, may subsequently become unlawful. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words it can develop during the course of incident at the spot co instanti."

21. Bare reading of Section 149 provides that it consists of two parts. First part of the section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was member. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 141, if it can be held that the offence was such as the members knew was likely to be committed and this is what is required in the second part of the Section. The purpose for which the members of the assembly set out or desired to achieve is the object. If the object desired by all the members is the same, the knowledge that is the object which is being pursued is shared by all the members and they are in general agreement as to how it is to be achieved and that is now the common object of the assembly.

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22. Admittedly, in the case at hand, a protest march was organized by residents of area for expressing their anguish against the sexual assault of one school-going girl, but unfortunately, some of the members of march, after having reached school, became violent and started giving beatings to the teacher. Since petitioners herein, after having seen conduct of some of the persons, who allegedly gave beatings to the teachers, separated them from the march and attempted to save the teachers from beatings allegedly given to them by some unscrupulous persons, they cannot be said to be a part of unlawful assembly. Though no hard and fast rule can be laid down under the circumstances from which the common object can be culled out, it may reasonably be collected from the nature of the assembly, arms it carries and behaviour at or before or after the scene of incident. The word "knew" used in second part of Section implies something more than possibility, and it cannot be made to bear the sense of "might have been known". Positive knowledge is necessary. When an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. There is nothing on record to suggest that petitioners herein, being members of protest march, were aware of the intention and object of some members of giving beatings to staff and teachers of school, wherein allegedly one student was sexually assaulted by a teacher.

23. Leaving everything aside, this Court finds that in the case at hand, complainant as well as victims have specifically named persons who had

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allegedly given them beatings. It has also come in the statement of complainant, recorded under Section 154 CrPC, on the basis of which FIR sought to be quashed came to be lodged, that petitioners, namely Dildar Ali Batt and Parvej Ali Batt, were seen while standing near Sub-Divisional Magistrate, Churah, and they also attempted to save teachers, namely Bhawani Sharma and Kesari Singh, from the mob. Reliance is also placed upon judgment in ***Amerika Rai and Others vs. State of Bihar***, (2011) 4 SCC 677, which read as under:

> "13. The law of vicarious liability under Section 149 IPC is crystal clear that even the presence in the unlawful assembly, but with an active mind, to achieve the common object makes such a person vicariously liable for the acts of the unlawful assembly. In that light, when the evidence is examined, it is obvious that Amerika Rai (A-1) who was the elder in the family and father of Darbesh Rai (A-2), Mithilesh Rai (A-4) and Chulhan Rai (A-3), instead of acting in a responsible manner and preventing any unpleasant incident, exhorted the accused persons to bring the gun. The guns are normally not brought for making a show. The exhortation to bring the gun definitely speaks about the guilty mind of Amerika Rai (A-1), so also the use of guns by Mithilesh Rai (A-4), Sanjay Rai (A-5) and Sipahi Rai (A-6) is very clear that they also had guilty mind. Mithilesh Rai (A-4) went to the extent of injuring Dineshwar Rai (PW-7). Therefore, even their presence and part played by them was obviously pointing towards the common object of committing murder of Shankar Rai. Unfortunately, Shankar Rai became the victim of the circumstances. The accused persons had nothing to do with Shankar Rai. Their main ire was directed at Ram Babu (PW-6). But, perhaps because Shankar Rai took side of Ram Babu (PW-6), he became the victim of circumstances and had to pay with his own life. Therefore, at least insofar as these persons are concerned, their presence and their active participation

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would make them guilty under Section 149 IPC, though the author of the injury to Shankar Rai was Chulhan Rai (A-3) whose appeal has already been dismissed."

24. For the discussion made hereinabove and as well as law taken into consideration, this Court is persuaded to agree with the contention of counsel for the petitioners that chances of conviction of the petitioners are very bleak, and as such, no fruitful purpose would be served in case FIR sought to be quashed is permitted to sustain. Though material adduced on record reveals that petitioners herein were part of protest march, but they immediately after having seen behaviour of unruly mob, distanced themselves from the mob and started helping the staff and teacher who were allegedly given beatings by certain members of mob, who are named in the complaint as well as statements made by the victims.

25. Consequently, in view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court (supra), FIR No.82 of 2017, dated 29.07.2017, registered at Police Station Tissa, District Chamba, under Sections 452, 353, 332, 143, 147, 149, 504 and 506 of Indian Penal Code, along with consequential proceedings are quashed and set aside, qua the petitioners only. Accused are acquitted of the charges framed against them.

The present petition is allowed and disposed of in the aforesaid terms. Pending application(s), if any, shall also stand disposed of.

July 20, 2026 **(Sandeep Sharma),**
Rajeev Raturi **Judge**