

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No. 1078 of 2024

Reserved on: 27.03.2025

Date of Decision: 10.04.2025.

Jitender Dhiman

...Petitioner

Versus

State of H.P. and others

...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No.

For the Petitioner : Mr. Rakesh Kumar Dogra,
Advocate.

For Respondents No.1 to 3 : Mr. Ajit Sharma, Deputy
Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for quashing the FIR No. 109 of 2023, dated 9.12.2023, registered at Police Station, Kumarsain, District, Solan HP, for the commission of offences punishable under Sections 406, 408, 420 and 468 of the Indian Penal Code (IPC) and the consequential proceedings arising out of the FIR.

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2. Briefly stated, the facts giving rise to the present petition are that the informant made a complaint to the police asserting that the petitioner was working as Assistant Manager of Branch Office Shivan in H.P. State Cooperative Bank. Nine customers raised objections regarding the transactions in their loan accounts. The bank conducted a fact-finding inquiry and Inquiry Officer reported that the petitioner/accused had provided financial accommodation to the customers. The customer agreed to provide him with funds which he transferred for personal benefit. It has caused a loss of ₹16,80,314/- to the bank. The police registered the FIR and conducted the investigation.

3. Being aggrieved from the registration of the FIR, the petitioner has filed the present petition for quashing of FIR and consequential proceedings. It was asserted that the bank authorities hatched a conspiracy against the petitioner to get him involved in a false case of financial impropriety. The petitioner had carried out the transactions through different banks for depositing the same in the MIT account of Branch Office, Shivan on 24.3.2023 and 27.3.2023 at the instance of respondent No.5. The petitioner had borrowed the money from

his relatives which stood refunded to the individuals concerned. This fact was brought to the notice of the Superintendent of Police, Shimla and SHO, Kumarsain. M/s J.M.A & Company, Chartered Accountants, Sanjauli wrote a letter to the bank stating that there was no financial loss to the bank except the interest loss of ₹49,908/- which occurred due to the technical fault. The amount of ₹16,80,314/- which was borrowed by him from the money lender was refunded to them at the instance of respondent No.5. FIR was wrongly registered. Therefore, he prayed that the present petition be allowed and the FIR be quashed.

4. The police filed the status report asserting that the record of four customers was obtained. It was found that the loan amount was deposited in their account and it was transferred by cheque or NEFT/RTGS. The petitioner was asked to join the investigation but he never joined the investigation. The statements of customers were recorded who stated that the loan was deposited in their account and they had themselves handed over blank cheques NEFT, and RTGS forms to the Branch Manager. The money was received by them and they do not want

any action should be taken against the petitioner. Hence the status report.

5. I have heard Mr. Rakesh Kumar Dogra, learned counsel for the petitioner and Mr. Ajit Sharma, learned Deputy Advocate General, for respondents No. 1 to 3-State.

6. Mr. Rakesh Kumar Dogra, learned counsel for the petitioner submitted that the status report shows that money has been paid to the customers and they do not want to take any action against the petitioner. The continuation of the proceedings amounts to abuse of the process of the Court. Therefore, he prayed that the present petition be allowed and the FIR be quashed.

7. Mr. Ajit Sharma, learned Deputy Advocate General, for the respondent-State submitted that the petitioner had transferred money to the customers' account who transferred it to his account. In this manner, he abused his position as Branch Manager and benefited himself. Therefore, he prayed that the present petition be dismissed.

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

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

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

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) *Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.*

(2) *Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a*

cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

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

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

In clause (1) it has been mentioned that where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, then the FIR or the complaint can be quashed.

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

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

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

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

9. It is in this backdrop that this Court, over the course of several decades, has laid down the principles and guidelines that High Courts must follow before quashing criminal proceedings at the threshold, thereby

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)

11. The present petition has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

12. The status report shows that the money was transferred to the customer's account who transferred it to the petitioner's account. Therefore, the petitioner had taken money from the bank in which he was employed by adopting a circuitous route by using the customers to take a loan and thereafter transferring the money to his account. This caused a loss of ₹16,80,314/- to the bank. The petitioner being Assistant Manager of the Bank was entrusted with the money of the bank and he caused a loss of ₹16,80,314/- to the bank and corresponding benefit to himself. These allegations show the commission of the cognizable offence.

13. A heavy reliance was placed upon the photocopy of the letter stated to have been written by JMA & Company to the

bank. It is impermissible to look into the same. It was laid down by the Hon'ble Supreme Court in *MCD v. Ram Kishan Rohtagi*, (1983) 1 SCC 1: 1983 SCC (Cri) 115 that the proceedings can be quashed if on the face of the complaint and the papers accompanying the same no offence is constituted. It is not permissible to add or subtract anything. It was observed:

“10. It is, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under Section 482 of the present Code.”

14. Madras High Court also held in *Ganga Bai v. Shriram*, 1990 SCC OnLine MP 213: ILR 1992 MP 964: 1991 Cri LJ 2018, that the fresh evidence is not permissible or desirable in the proceedings under Section 482 of Cr.P.C. It was observed:

“Proceedings under Section 482, Cr.P.C. cannot be allowed to be converted into a full-dressed trial. Shri Maheshwari filed a photostat copy of an order dated 28.7.1983, passed in Criminal Case No. 1005 of 1977, to which the present petitioner was not a party. *Fresh evidence at this stage is neither permissible nor desirable. The respondent by filing this document is virtually introducing additional evidence, which is not the object of Section 482, Cr.P.C.*”

15. Andhra Pradesh High Court also took a similar view in *Bharat Metal Box Company Limited, Hyderabad and Others vs. G. K. Strips Private Limited and another*, 2004 STPL 43 AP, and held:

"9. This Court can only look into the complaint and the documents filed along with it and the sworn statements of the witnesses if any recorded. While judging the correctness of the proceedings, it cannot look into the documents, which are not filed before the lower Court. Section 482 Cr.PC debars the Court to look into fresh documents, in view of the principles laid down by the Supreme Court in *State of Karnataka v. M. Devendrappa and another*, 2002 (1) Supreme 192. The relevant portion of the said judgment reads as follows:

"The complaint has to be read as a whole. If it appears that on consideration of the allegations, in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When information is lodged at the Police Station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in Court, which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings".

16. A similar view was taken in *Mahendra K.C. v. State of Karnataka*, (2022) 2 SCC 129; (2022) 1 SCC (Cri) 401 wherein it was observed at page 142:

“16. ... the test to be applied is whether the allegations in the complaint as they stand, without adding or detracting from the complaint, prima facie establish the ingredients of the offence alleged. At this stage, the High Court cannot test the veracity of the allegations nor for that matter can it proceed in the manner that a judge conducting a trial would, based on the evidence collected during the course of the trial.”

17. This position was reiterated in *Supriya Jain v. State of Haryana*, (2023) 7 SCC 711: 2023 SCC OnLine SC 765 wherein it was held:

13. All these documents which the petitioner seeks to rely on, if genuine, could be helpful for her defence at the trial but the same are not material at the stage of deciding whether quashing as prayed for by her before the High Court was warranted or not. We, therefore, see no reason to place any reliance on these three documents.

15. A similar view was taken in *Iveco Magirus Brandschutztechnik GMBH v. Nirmal Kishore Bhartiya*, (2024) 2 SCC 86: (2024) 1 SCC (Cri) 512: 2023 SCC OnLine SC 1258, wherein it was observed:

“63. Adverting to the aspect of the exercise of jurisdiction by the High Courts under Section 482CrPC, in a case where the offence of defamation is claimed by the accused to have not been committed based on any of the Exceptions and a prayer for quashing is made, the law seems to be well settled that the High Courts can go no further and enlarge the scope of inquiry if the accused seeks to rely on materials which were not there before the Magistrate. This is based on the simple proposition that what the Magistrate could not do, the High Courts may not do. We

may not be understood to undermine the High Courts' powers saved by Section 482CrPC; such powers are always available to be exercised *ex debito justitiae* i.e. to do real and substantial justice for the administration of which alone the High Courts exist. However, the tests laid down for quashing an FIR or criminal proceedings arising from a police report by the High Courts in the exercise of jurisdiction under Section 482CrPC not being substantially different from the tests laid down for quashing a process issued under Section 204 read with Section 200, the High Courts on recording due satisfaction are empowered to interfere if on a reading of the complaint, the substance of statements on oath of the complainant and the witness, if any, and documentary evidence as produced, no offence is made out and that proceedings, if allowed to continue, would amount to an abuse of the legal process. This too, would be impermissible if the justice of a given case does not overwhelmingly so demand." (Emphasis supplied)

18. It was submitted that the money has been paid to the customers and they do not want to take any action against the petitioner. This submission will not help the petitioner. Mere repayment of the embezzled amount does not wipe out the offence committed by a person.

19. It was submitted that no loss was caused to the bank and this fact was brought to the notice of Superintendent of Police, Shimla and SHO, Police Station Kumarsain. This Court cannot go into the truthfulness or otherwise of the allegations made in the complaint. This position was laid down in *Maneesha*

Yadav v. State of U.P., 2024 SCC OnLine SC 643 wherein it was held: -

“13. As has already been observed hereinabove, the Court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint at the stage of quashing of the proceedings under Section 482 Cr. P.C. However, the allegations made in the FIR/complaint, if taken at its face value, must disclose the commission of an offence and make out a case against the accused. At the cost of repetition, in the present case, the allegations made in the FIR/complaint even if taken at its face value, do not disclose the commission of an offence or make out a case against the accused. We are of the considered view that the present case would fall under Category-3 of the categories enumerated by this Court in the case of *Bhajan Lal (supra)*.

14. We may gainfully refer to the observations of this Court in the case of *Anand Kumar Mohatta v. State (NCT of Delhi)*, Department of Home (2019) 11 SCC 706: 2018 INSC 1060:

“14. First, we would like to deal with the submission of the learned Senior Counsel for Respondent 2 that once the charge sheet is filed, the petition for quashing of FIR is untenable. We do not see any merit in this submission, keeping in mind the position of this Court in *Joseph Salvaraj A. v. State of Gujarat* [*Joseph Salvaraj A. v. State of Gujarat*, (2011) 7 SCC 59: (2011) 3 SCC (Cri) 23]. In *Joseph Salvaraj A.* [*Joseph Salvaraj A. v. State of Gujarat*, (2011) 7 SCC 59: (2011) 3 SCC (Cri) 23], this Court while deciding the question of whether the High Court could entertain the Section 482 petition for quashing of FIR when the charge-sheet was filed by the police during the pendency of the Section 482 petition, observed: (SCC p. 63, para 16)

“16. Thus, the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same is not made out even prima facie from the complainant's FIR. Even if the charge sheet had been filed, the learned Single Judge [*Joeph Saivaraj A. v. State of Gujarat*, 2007 SCC OnLine Guj 365] could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, charge-sheet, documents, etc. or not.”

20. It was laid down by the Hon’ble Supreme Court in *Dharambeer Kumar Singh v. State of Jharkhand*, (2025) 1 SCC 392: 2024 SCC OnLine SC 1894 that the Court while exercising jurisdiction under section 482 of CrPC cannot conduct a mini-trial. It was observed at page 397:

“17. This Court in a series of judgments has held that while exercising inherent jurisdiction under Section 482 of the Criminal Procedure Code, 1973, the High Court is not supposed to hold a mini-trial. A profitable reference can be made to the judgment in *CBI v. Aryan Singh* [*CBI v. Aryan Singh*, (2023) 18 SCC 399: 2023 SCC OnLine SC 379]. The relevant paragraph from the judgment is extracted hereunder: (SCC paras 6-7)

“6. ... As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482CrPC, the Court is not required to conduct the mini-trial. ...

7. ... At the stage of discharge and/or while exercising the powers under Section 482CrPC, the Court has very limited jurisdiction and is required to consider

‘whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not’.”

21. Hence, it is not permissible for the Court to go into the truthfulness or otherwise of the allegations made in the FIR.

22. The contents of the FIR disclose the commission of a cognizable offence and it is impermissible to quash the FIR at this stage.

23. Therefore, the present petition fails and the same is dismissed.

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

(Rakesh Kainthla)
Judge

10th April, 2025
(Chander)