

## High Court Of Himachal Pradesh

Cr.MMO No. 316 of 2021

Judgment Date:

20-07-2021

**Vipul Prabhakar**

**..Petitioner**

**State Of H.p. And Anr.**

**..Respondent**

Bench:

**{ Hon'ble Mr. Justice Anoop Chitkara }**

Citation:

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Anoop Chitkara, J.

1. The petitioner, arraigned as accused in the FIR mentioned above, has come up before this Court under Section 482, Code of Criminal Procedure, 1973, for quashing the proceedings on grounds that the investigations and the allegations do not make out any case.

2. Facts necessary to decide the present petition are that on 24.7.2019, a police team, which was deputed to maintain law and order informed the aforesaid Police Station about commission of cognizable offences, which led to registration of aforesaid FIR. As per the said information, the Investigating Officer stated that on 24.7.2019 at about 2.00 p.m. a group of lawyers raising slogans, proceeded from the side of A.G office towards CTO, Shimla. These lawyers were raising slogans against an order passed by this Court. Since the raising slogans against the order of this Court was an offence under Sections 143 and 188, IPC, as such, the investigator registered the FIR mentioned above.

ANALYSIS:

3. The matter pertains to raising of slogans and the investigation does not reveal the identification of any such lawyer by the investigator. It is not mentioned that what was the language of slogans and against which order of this Court, the Advocates were protesting. Given this, the advocates, who are the saviour of Freedom of Speech, the registration of FIR without any legally admissible evidence would only dampen their spirits. Thus, there is no reason to continue the aforesaid FIR.

JUDICIAL PRECEDENTS ON JURISPRUDENCE OF QUASHING:

4. The law is almost settled by various pronouncements of the Hon'ble Supreme Court that when the FIR and the investigation do not make out any case or the prosecution is inherently and patently illegal, and the matters that fulfill the criteria for quashing, the High Court resorting to S. 482 CrPC can quash such FIR and consequent

proceedings. In *R.P. Kapur v State of Punjab*, AIR 1960 SC 866, a three-member Bench of Hon'ble Supreme Court holds, "[6]. ...It is well established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Ordinarily, criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, the High Court would be justified in quashing the proceedings on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such case, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal Court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under S. 561-A, the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under S. 561-A in the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point (Vide : *In Re: Shripad G. Chandavarkar*, AIR 1928 Bom 184, *Jagat Chandra Mozumdar v. Queen Empress*, ILR 26 Cal 786, *Dr. Shankar Singh v. State of Punjab*, 56 Pun LR 54 : (AIR 1954 Punj 193), *NripendraBhusan Roy v. GobinaBandhu Majumdar*, AIR 1924 Cal 1018 and *Ramanathan Chettiyar v. SivaramaSubramania*, ILR 47 Mad 722 : (AIR 1925 Mad 39)."

5. In *Madhavrao Jiwaji Rao Scindia v Sambhajirao Chandrojirao Angre*, 1988 (1) SCC 692, a three judges' bench of the Hon'ble Supreme Court holds "[7]. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

#### CONCLUSION:

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

7. In *Himachal Pradesh Cricket Association v State of Himachal Pradesh*, 2018 (4) Crimes 324, Hon'ble Supreme Court holds "[47]. As far as Writ Petition (Criminal) No. 135 of 2017 is concerned, the appellants came to this

Court challenging the order of cognizance only because of the reason that matter was already pending as the appellants had filed the Special Leave Petitions against the order of the High Court rejecting their petition for quashing of the FIR/Chargesheet. Having regard to these peculiar facts, writ petition has also been entertained. In any case, once we hold that FIR needs to be quashed, order of cognizance would automatically stands vitiated.”

8. Given above, this is a fit case where the inherent jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure is invoked to quash the proceedings mentioned above. The FIR mentioned above is quashed qua the petitioner and all the consequential proceedings are also quashed and set aside qua the petitioner. The bail bonds are accordingly discharged. All pending application(s), if any, stand closed.

9. In the facts and circumstances peculiar to this case, the petition is allowed in the aforementioned terms.

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