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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO No. 654 of 2023
Reserved on: 11.09.2023
Date of Decision: 13.10. 2023

Abhishek Arora

....Petitioner

Versus

State of Himachal Pradesh

...Respondent

Coram

Hon'ble Mr. Justice Sushil Kukreja, Judge.

Whether approved for reporting?¹

For the petitioners:

Ms. Ashima Mandla and Ms.
Parul Negi, Advocates.

For the respondent/State:

Mr. B.N. Sharma, Additional
Advocate General.

Sushil Kukreja, Judge

The accused (petitioner herein) preferred the instant petition under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C. '), by invoking inherent powers of this Court, seeking quashing of FIR No. 103 of 2022, dated 30.06.2022, under Sections 279 and 337 of Indian Penal Code (for short 'IPC'), registered at Police Station Dharampur, District Solan, H.P..

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

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2. As per the petitioner, the aforesaid FIR was registered against him for an unavoidable minor road accident, dated 29.06.2022, wherein no human being suffered injuries. The petitioner further averred that in sequel to the aforesaid FIR, Police Challan No. 144 of 2022, State of H.P. vs. Abhishek Arora, is pending adjudication before the Court of learned Judicial Magistrate First Class, District Solan, H.P.. As per the petitioner, the aforesaid FIR is abuse of process of criminal law and thus untenable in the eyes of law.

3. The petitioner has further averred that he is a law-abiding Citizen and young Advocate. On the night of 29.06.2022 an unfortunate and inevitable minor accident happened, when he was driving within the permissible speed through hilly area from his residence in his Breeza car, having registration No. DL BCAR 4180, around 11:15 p.m., and due to incessant rain for the past two days the road was slippery and on a sharp turn, he lost control over his vehicle and resultantly hit a parapet. There were no street light on the spot. When HC Ashok Kumar (*de facto* complainant) alongwith other personnel were patrolling, they found the petitioner in an injured state in his car. Th *de facto* complaint

shifted the petitioner to Community Health Centre Dharampur, District Solan, H.P., where it was found that the petitioner had suffered abrasion on left leg and pain in lower chest and upper abdomen. No other human being suffered any injury in the aforesaid accident and on 30.06.2022, the respondent, in undue haste and mechanical manner, without having complete knowledge of the facts lodged FIR No. 103 of 2022, registered at Police Station Dharampur, District Solan, H.P., under Section 279 and 337 of IPC, on the complaint of *de facto* complainant. It is further averred that there is no evidence that the petitioner was driving his vehicle in a rash and negligent manner. Lastly, it is prayed that the instant petition may be allowed and FIR No. 103 of 2022, dated 30.06.2022, under Sections 279 and 337 IPC, registered against the petitioner at Police Station Dharampur, District Solan, H.P., alongwith consequential proceedings, i.e., case titled as State of H.P. vs. Abhishek Arora, bearing Police Challan No. 144 of 2022, pending adjudication in the Court of learned Judicial Magistrate First Class, District Solan, H.P. may be quashed and set-aside and the petitioner may be acquitted.

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4. The respondent/State, by way of filing reply to the petition, contested the petition. It is denied in the reply that the accident was minor, in which no person suffered any injuries, and the FIR is the abuse of the process of law. It is averred that initially the petitioner-accused was taken by the Police to CHC Dharampur from where he was referred to PGI Chandigarh, due to his critical condition and thereafter he was taken to GMCH Sector 32, Chandigarh. The respondent/State denied that the petitioner-accused was driving the vehicle on a slippery road in permissible speed, whereas the petitioner-accused was driving the vehicle in a rash and negligent manner. As a result of rash and negligent driving of the petitioner-accused, he lost control over his vehicle and hit the same against the parapet and the petitioner-accused sustained severe injuries. It is denied that *challan* does not have the essential *prima facie* ingredients of Sections 279 and 337 IPC, as no one suffered any injury, whereas, the petitioner-accused suffered severe injuries. Investigation reveals that there exists *prima facie* case against the petitioner-accused, accordingly charge-sheet was presented before the learned Trial Court. Lastly, it is prayed that the instant petition, being devoid of merits, be dismissed.

5. I have heard the learned counsel for the petitioner, learned Additional Advocate General, for the respondent/State and carefully examined the entire records.

6. Before considering the rival submissions of the parties, the law relating to the scope and ambit of the power of the High Court under section 482 Cr.P.C. to quash FIR/complaint is required to be examined first. In this connection, this Court can gainfully refer to the judgment passed by the Hon'ble Apex Court in the case of "M/S Neeharika Infrastructure Ltd. V. State of Maharashtra &Ors." reported in 2021 SCC Online 315 wherein the Hon'ble Apex Court after considering a number of its earlier judgments, has held as under:-

"34. While considering the aforesaid issue, law on the exercise of powers by the High Court under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India to quash the FIR/complaint and the parameters for exercise of such powers and scope and ambit of the power by the High Court under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India are required to be referred to as the very parameters which are required to be applied while quashing the FIR will also be applicable while granting interim stay/protection.

"35. The first case on the point which is required to be noticed is the decision of this Court in

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the case of R.P. Kapur (supra). While dealing with the inherent powers of the High Court under Section 561-A of the earlier Code (which is parimateria with Section 482 of the Code), it is observed and held that the inherent powers of the High Court under Section 561 of the earlier Code cannot be exercised in regard to the matters specifically covered by the other provisions of the Code; 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. After observing this, thereafter this Court then carved out some exceptions to the above-stated rule, which are as under:

- "(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.
- (ii) 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 Cril. Petn. No. 30 of 2021 Page 12 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.

- (iii) Where 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 the 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 Section 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."

"36. In the case of Kurukshetra University (supra), this Court observed and held that inherent powers under Section 482 Cr.P.C. do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice; that statutory power has to be exercised sparingly with circumspection and in the rarest of rare cases. In the case before this Court, the High Court quashed the first information report filed by the Kurukshetra University through Warden and that too without issuing notice to the University, in exercise of inherent powers under Section 482 Cr.P.C. This Court noticed and observed that the High Court was not justified in quashing the FIR when the police had not even commenced investigation into the complaint filed by the

Warden of the University and no proceedings were at all pending before any Court in pursuance of the FIR.

"37. Then comes the celebrated decision of this Court in the case of BhajanLal (supra). In the said decision, this Court considered in detail the scope of the High Court powers under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India to quash the FIR and referred to several judicial precedents and held that the High Court should not embark upon an inquiry into the merits and demerits of the allegations and quash the proceedings without allowing the Cril. Petn. No. 30 of 2021 Page 13 investigating agency to complete its task. At the same time, this Court identified the following cases in which FIR/complaint can be quashed:

"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) 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 any 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 Act concerned (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 Act concerned, 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

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with a view to spite him due to private and personal grudge.".....

7. In the case of R.P. Kapur Vs State of Punjab reported in AIR1960 SC 866, the Hon'ble Apex Court discussing the power of the High Court under Section 482 Cr.P.C. observed in paragraph 6 as follows:-

"6. Before dealing with the merits of the appeal it is necessary to consider the nature and scope of the inherent power of the High Court under Section 561-A of the Code. The said section saves the inherent power 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. There is no doubt that this inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code. In the present case the magistrate before whom the police report has been filed under Section 173 of the Code has yet not applied his mind to the merits of the said report and it may be assumed in favour of the appellant that his request for the quashing of the proceedings is not at the present stage covered by any specific provision of the Code. 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 proceeding 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 cases 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 Section 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. xxxxxxxx"

8. Thus, the Hon'ble Apex Court has discussed 3 category of cases in which criminal proceedings can be quashed. They are as follows:-

- "(a) where there is a legal bar against institution or continuance of criminal proceedings;
- (b) where the allegations in the FIR do not disclose or constitute an offence, even if taken at face value and not their entirety.
- (c) where the allegations made constitute an offence but there is no evidence which can prove them."

9. It is well settled that inherent powers under Section 482 Cr.P.C. have to be exercised to secure the ends of justice, to prevent abuse of process of any Court and to make such orders as may be necessary to give effect to any order under the Cr.P.C. depending upon the facts of given case. In the exercise of inherent powers under Section 482 Cr.P.C., the proceedings can be quashed if it comes to the conclusion that allowing the proceedings 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.

10. Adverting back to the facts of the present case, the impugned FIR has been registered for offences under Sections 279 and 337 IPC. A perusal of the FIR at Annexure P1 would reveal that on the night of 29.06.2022 at about 11:20 p.m., an accident had taken place, when the petitioner was driving his Breeza car, having registration No. DL BCAR 4180, through hilly area and on a sharp turn he lost control over his vehicle and resultantly collided with a parapet. When HC Ashok Kumar, alongwith other personnel were patrolling, they found the petitioner in an injured state in his car. The petitioner was shifted to Community Health Centre Dharampur, District Solan, H.P., where it was found that he

had suffered abrasion on left leg and pain in lower chest and upper abdomen.

11. After applying the ratio laid down in the above referred several judgments, this Court finds that this case stands to the category when the registration of case itself is an abuse of process of law. The allegations made in the FIR, even if accepted at their face value, do not *prima facie* constitute any offence against the petitioner. It is not in dispute that no other person, except the petitioner himself, had sustained injury in the aforesaid accident, as such, the allegations cannot be construed to be in the nature of an offence alleged to have been committed against the Society at large. Therefore, this Court is of the opinion that the continuation of the criminal proceedings against the petitioner would tantamount to abuse of the process of law, because the alleged offence is neither heinous offence showing extreme depravity nor is strictly against the society. The offence is of personal nature, therefore, no fruitful purpose would be served in continuing with the criminal proceedings against the petitioner/accused.

12. Hence, considering the facts and the circumstances of the case in entirety, I am of the opinion that

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the present petition deserves to be allowed for securing the ends of justice and, therefore, the same is allowed. Accordingly, FIR No. 103 of 2022, dated 30.06.2022, under Sections 279 and 337 IPC, registered against the petitioner-accused at Police Station Dharampur, District Solan, H.P., and the consequent proceedings, i.e., criminal case titled as State of H.P. vs. Abhishek Arora, bearing Police Challan No. 144 of 2022, pending before the Court of learned Judicial Magistrate 1st Class, District Solan, H.P., arising out of the aforesaid FIR, are ordered to be quashed and set-aside.

13. Petition stands disposed of in above terms, so also the pending application(s), if any.

13th October, 2023
(virender)

(Sushil Kukreja)
Judge