

WWW.LIVELAW.IN
IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA

Cr.MMO No.203 of 2021
Reserved on: April 23, 2021.
Date of Decision: May 11, 2021.

Ms. Anjali Soni Verma and another ...Petitioners.

Versus

State of Himachal Pradesh and others ...Respondents.

Coram:
The Hon'ble Mr. Justice Anoop Chitkara, Judge.

Whether approved for reporting?¹NO

For the petitioners: Mr. Ajay Kumar, Advocate, vice Mr. Peeyush Verma, Advocate.

For the respondent: Mr. Nand Lal Thakur, Additional Advocate General, for the State.

THROUGH VIDEO CONFERENCE

FIR No.	Dated	Police Station	Sections
132/2018	28.5.2018	West Shimla, District Shimla, H.P.	341, 143 of the IPC.

Anoop Chitkara, Judge.

Seeking quashing of FIR, registered for being members of an unlawful assembly which blocked National Highway for 30 minutes, thus causing wrongful restraint, the petitioners have come up before this Court on the grounds that they were not present at the spot and were implicated without any evidence of identification.

2. The gist of the facts apposite to decide the present petition is that on 28-5-2018, the SHO received information that people were protesting at National Highway near Old Barrier Petrol Pump, near Shimla City, on not getting the water

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

supply for days. In the process, the mob has blocked the said National Highway. The Additional District Magistrate, Shimla, and the Police Officials, reached the spot and successfully persuaded the protestors and opened the road. Subsequently, based on the information, the Police registered the FIR mentioned above against eleven persons, including the petitioners.

3. Ld. Counsel for the petitioners contends that the petitioners were not present at the spot. Even if all allegations recorded in the FIR and investigation are hypothetically accepted to be accurate and correct, such allegations still fail to make out any *prima facie* case against the petitioners because there is no evidence of any identification. There is no evidence that they were also amongst those persons who had blocked the road. Thus, FIR and proceedings be quashed.

4. On the contrary, Mr. Nand Lal Thakur, Ld. Additional Advocate General state that even if the petitioners are taken not to have participated in the blockade, still they did not intervene and did not stop their neighbors from blocking the road. Thus, he seeks dismissal of the petition.

STAGE OF QUASHING FIR:

5. In **Ashok Chaturvedi v Shitul H. Chanchani**, 1998(7) SCC 698, Hon'ble Supreme Court holds that the determination of the question as regards the propriety of the order of the Magistrate taking cognizance and issuing process need not necessarily wait till the stage of framing the charge. The Court holds,

... This argument, however, does not appeal to us inasmuch as merely because an accused has a right to plead at the time of framing of charges that there is no sufficient material for such framing of charges as provided in Section 245 of the Criminal Procedure Code, he is debarred from approaching the court even at an earliest (sic earlier) point of time when the Magistrate takes cognizance of the offence and summons the accused to appear to contend that the very issuance of the order of taking cognizance is invalid on the ground that no offence can be said to have been made out on the allegations made in the complaint petition. It has been held in a number of cases that power under Section 482 has to be exercised sparingly and in the interest of justice. But allowing the criminal proceeding to continue even where the allegations in the complaint petition do not make out any offence would be tantamount to an abuse of the process of court, and therefore, there cannot be any dispute that in such case power under section 482 of the Code can be exercised."

6. In *Kunstocom Electronics (I) Pvt. Ltd. v. Gilt Pack Ltd. and another*, (2002) 2 SCC 383, Hon'ble Supreme Court holds as under:-

8..... There is no hard and fast rule that the objection as to cognizability of offence and maintainability of the complaint should be allowed to be raised only at the time of framing the charge.

7. In *Girish Sarwate v. State of A.P.*, 2005(1) R.C.R.(Criminal) 758, the Full Bench of Andhra Pradesh High Court observed that the High Court need not wait for completion of investigation and taking cognizance by the Magistrate.

JUDICIAL PRECEDENTS ON JURISPRUDENCE OF QUASHING:

8. The law is almost settled by larger benches judgements of Supreme Court that the offences, those are not listed as compoundable, under Section 320 CrPC, can also be compounded, and the procedure to follow would be by quashing the FIR, and consequent proceedings.

a) 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

WWW.LIVELAW.IN

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)."

b) In MadhavraoJiwaji 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.”

- c) A reference be also made to the decision rendered in Cr. Appeal 330 of 2021, M/s Neeharika Infrastructure Pvt. Ltd., by three Judges Bench of Hon’ble Supreme Court.

ANALYSIS AND REASONING:

9. The investigation is complete and report under section 173(2) CrPC stands filed. The FIR and the investigation report nowhere mention the role of the petitioners. Mr. Nand Lal Thakur, Ld. Additional Advocate General did not draw attention of this Court to any evidence about the identification of the petitioners amongst those who had blocked the road. Even if this Court presumes the petitioners present at the spot, it would still not lead to an automatic inference of their participation in blocking the road.

10. All roads, be it expressways, village roads, or colony roads, are lifelines. Under any pretext, how so ever justiciable it might be, the blocking of any highway, road, street, or path can neither be condoned nor forgiven or approved. However, mere presence at the spot in the demonstration would not invite criminal acts in the facts and nature of allegations made in the present FIR. The best evidence in these situations is videography. Since almost every phone has a camera and inbuilt video recording features, the absence of videography would cast doubt about the credibility and genuineness of the investigation.

11. The State has failed to produce a single evidence to prove that the petitioners were also amongst those persons who had blocked the road. Thus, even if this Court believes all the allegations in FIR as truthful, still there is no allegation against the petitioners of participating in any criminal act. Therefore, if proceedings are allowed to be continued, it shall amount to the miscarriage of Justice. In the cumulative effect

of all the factors mentioned above, and in the peculiar facts and circumstances, it is one of the exceptional cases, where this Court should exercise its inherent jurisdiction under Section 482 of the Code of Criminal Procedure.

12. 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. 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.

13. In **Himachal Pradesh Cricket Association v State of Himachal Pradesh**, 2018 (4) Crimes 324, Hon'ble Supreme Court holds as under: -

“[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.”

14. Consequently, this petition is allowed, and FIR No.132 of 2018 dated 28.5.2018, registered in Police Station (West), Shimla, under Sections 341 and 143 IPC, is quashed qua the petitioners. Since FIR has been quashed, all the consequential proceedings are also quashed and set aside qua the petitioners. Petition is allowed in aforesaid terms.

All pending application(s), if any, stand closed.

Petition allowed.

(Anoop Chitkara),
Judge.

May 11, 2021 (KS).