IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No.1126 of 2024
Reserved on: 22.11.2024
Date of Decision: 29.11.2024

Avinash Kumar ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla

Whether approved for reporting? No.

For the Petitioner	:	Mr. Bhupinder Singh Ahuja, Advocate.
For the Respondent	:	Mr. Lokender Kutlehria, Additional Advocate General.

Rakesh Kainthla, Judge

The Board examinations were scheduled to be held on 07.03.2020 at 8:45 a.m. The question papers and answer sheets were being distributed when petitioner Avinash Kumar entered the examination hall after switching on his mobile and started threatening the staff on duty. He also had a scuffle with the staff on duty. Some staff members sustained injuries. The petitioner was not assigned any duty during the examination and could not have entered the hall. The staff made a complaint to the principal, who filed a complaint before the SHO, Police Station Khundia, District Kangra,

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H.P. Entry No. 25, dated 07.03.2020, was recorded in the Police Station. An application was filed before the learned Judicial Magistrate, First Class, Dehra, to seek permission to conduct the investigation. Learned Judicial Magistrate Court First Class (Dehra), District Kangra, H.P. granted the permission vide order dated 18.03.2020. The police recorded the statement of witnesses and filed a complaint (Kalandra) against the petitioner before the Court for the commission of an offence punishable under Section 186 of the Indian Penal Code (IPC).

2. Being aggrieved from filing of the complaint and the pendency of the proceedings, the petitioner has filed the present petition asserting that the learned Judicial Magistrate erred in entertaining the Kalandra, as it does not amount to complaint under Section 2(d) of Cr.P.C.. The cognizance could not have been taken for the commission of an offence punishable under Section 186 of IPC without a complaint made by the person who was obstructed in discharge of public function as per Section 195 of the Code of Criminal Procedure. Hence, it was prayed that the present petition be allowed and the proceedings pending before the learned Judicial Magistrate First Class, Dehra, District Kangra, H.P. be quashed.

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3. The State has filed a status report reproducing the contents of the complaint made to the police as well as steps taken by the police during the investigation after seeking permission from the Court.

4. I have heard Mr Bhupidner Singh Ahuja, learned counsel for the petitioner and Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State.

5. Mr Bhupinder Singh Ahuja, learned counsel for the petitioner, submitted that Section 195 of the Code of Criminal Procedure prevents the Court from taking cognisance of the commission of an offence punishable under Section 186 of the IPC; therefore, the learned Trial Court erred in taking cognisance. The proceedings pending before the learned Judicial Magistrate First Class, Dehra, District Kangra, H.P. are without jurisdiction. Hence, he prayed that the present petition be allowed and the proceedings be quashed. He relied upon judgments of the Hon'ble Supreme Court in ***Daulat Ram vs. State of Punjab AIR 1962 SC 1206*** and ***C. Muniappan and others vs State of Tamil Nadu (2010) 9 SCC 567*** in support of his submission. He further submitted that the status report filed by the respondent/State does not deal with the grounds raised in the petition

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and the respondent/State be directed to file a detailed reply to the contents of the petition.

6. Mr Lokender Kutlehria, learned Additional Advocate General for the respondent, submitted that the complaint made to the police disclosed the commission of cognizance offence and the learned Trial Court had rightly taken cognizance of the same. Therefore, he prayed that the present petition be dismissed.

7. I have given considerable thought to the submission made at the bar and have gone through the record carefully.

8. The law regarding the exercise of jurisdiction under Section 482 of Cr.P.C. was considered by the Hon'ble Supreme Court in ***A.M. Mohan v. State, 2024 SCC OnLine SC 339,*** wherein it was observed:-

> "**9.** The law with regard to the exercise of jurisdiction under Section 482 of Cr. P.C. to quash complaints and criminal proceedings has been succinctly summarised by this Court in the case of ***Indian Oil Corporation* v. *NEPC India Limited (2006) 6 SCC 736: 2006 INSC 452*** after considering the earlier precedents. It will be apposite to refer to the following observations of this Court in the said case, which read thus:
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> > "**12.** The principles relating to the exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—***Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692: 1988 SCC (Cri)***

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234], State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335: 1992 SCC (Cri) 426], Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194: 1995 SCC (Cri) 1059], Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591: 1996 SCC (Cri) 1045], State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164: 1996 SCC (Cri) 628], Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259: 1999 SCC (Cri) 401], Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269: 2000 SCC (Cri) 615], Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168: 2000 SCC (Cri) 786], M. Krishnan v. Vijay Singh [(2001) 8 SCC 645: 2002 SCC (Cri) 19] and ***Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122: 2005 SCC (Cri) 283].*** The principles relevant to our purpose are:

> (*i*) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.
>
> For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint is warranted while examining prayer for quashing a complaint.
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> (*ii*) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with *mala fides*/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.
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> (*iii*) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.
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> (*iv*) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If

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> the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are necessary for making out the offence.
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> (*v.*) A given set of facts may make out : (*a*) purely a civil wrong, (*b*) purely a criminal offence, or (*c*) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

9. Similar is the judgment in ***Maneesha Yadav v. State of U.P.,*** ***2024 SCC OnLine SC 643,*** wherein it was held: -

> "**12.** We may gainfully refer to the following observations of this Court in the case of ***State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335: 1990 INSC 363***:
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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

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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.
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> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognisable 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.
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> (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.
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> (4) Where the allegations in the FIR do not constitute a cognisable 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.
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> (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.
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> (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 to spite him due to private and personal grudge.
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> 103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too, in the rarest of rare cases, that the court will 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 and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

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

11. A perusal of the complaint made to the police shows that the board examination was being conducted on 07.03.2020 at 8:45 a.m. when the petitioner entered the hall and threatened the persons who were discharging their official duties. He had a scuffle with them. The police conducted the medical examination of Sanjay Kumar, who had sustained simple injuries. Statements of Abhishek Kumar, Sanjay Kumar, Kartar Singh, Tilak Rai, Ravinder Kumar, Devraj and Trilok Chand were recorded in support of the allegations made in the complaint. It is apparent from the perusal of the statements, as well as the MLC of Sanjay Kumar that the petitioner had used criminal

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force to deter a public servant in the discharge of his official duties. He has also caused hurt to a public official while discharging his official duties. Therefore, *prima facie* offences punishable under Sections 332 and 353 of the IPC are made out in the present case, and the police were not justified in treating it to be a case of obstruction under Section 186 of the IPC. The distinction between an offence under Sections 186 and 353 of IPC was explained by the Hon'ble Apex Court in ***Durgacharan Naik v. State of Orissa, 1966 SCC OnLine SC 58: (1966) 3 SCR 636: 1966 Cri LJ 1491: AIR 1966 SC 1775: (1967) 2 SCJ 75*** in the following manner:

> "5...it cannot be ignored that ss. 186 and 353, Penal Code, 1860 relate to two distinct offences, and while the offence under the latter section is cognisable, the one under the former section is not so. The ingredients of the two offences are also distinct. Section 186, Penal Code, 1860 is applicable to a case where the accused voluntarily obstructs a public servant in the discharge of his public functions, but under s. 353, Penal Code, 1860, the ingredient of assault or use of criminal force while the public servant is doing his duty as such is necessary. The quality of the two offences is also different. Section 186 occurs in Ch. X of the Penal Code, 1860, dealing with Contempt of the lawful authority of public servants, while s. 353 occurs in Ch. XVI regarding the offences affecting the human body..."

12. In the present case, there was not only obstruction but the use of criminal force and causing hurt to the public official in the discharge of the official duty. Thus, the learned Judicial Magistrate

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and the police had erred in treating it to be a case of obstruction under Section 186 of IPC.

13. It was laid down by the Hon'ble Supreme Court in ***Durgacharan Naik v. State of Orissa, 1966 SCC OnLine SC 58: (1966) 3 SCR 636: 1966 Cri LJ 1491: AIR 1966 SC 1775: (1967) 2 SCJ 75*** that where the same facts constitute offence punishable under Section 186 of IPC and 353 of IPC, it is permissible for the Court to take cognisance of the commission of an offence punishable under Section 353 of IPC. It was observed:

> "5.... It is well established that Section 195 of the Criminal Procedure Code does not bar the trial of an accused person for a distinct offence disclosed by the same set of facts but which is not within the ambit of that section. In ***Satis Chandra Chakravarti v. Ram Dayal De [24 CWN 982]*** it was held by Full Bench of the Calcutta High Court that where the maker of a single statement is guilty of two distinct offences, one under Section 211 of the Indian Penal Code, which is an offence against public justice, and the other an offence under Section 499 wherein the personal element largely predominates, the offence under the latter section can be taken cognisance of without the sanction of the court concerned, as the Criminal Procedure Code has not provided for sanction of court for taking cognisance of that offence. It was said that the two offences, being fundamentally distinct in nature, could be separately taken cognisance of. That they are distinct in character is patent from the fact that the former is made non-compoundable, while the latter remains compoundable; in one, for the initiation of the proceedings, the legislature requires the sanction of the court under Section 195 of the Criminal Procedure Code, while in the other, cognisance can be taken of the offence on the complaint

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of the person defamed. It is pointed out in the Full Bench case that where upon the facts the commission of several offences is disclosed, some of which require sanction and others do not; it is open to the complainant to proceed in respect of those only which do not require sanction; because to hold otherwise would amount to legislating and adding very materially to the provisions of Sections 195 to 199 of the Code of Criminal Procedure. The decision of the Calcutta case has been quoted with approval by this Court in ***Basir-ul-Huq v. State of West Bengal [(1953) 1 SCC 637 : (1953) SCR 836]*** in which it was held that if the allegations made in a false report disclose two distinct offences, one against a public servant and the other against a private individual, the latter is not debarred by the provisions of Section 195 of the Criminal Procedure Code, from seeking redress for the offence committed against him.

6. *In the present case, therefore, we are of the opinion that Section 195 of the Criminal Procedure Code does not bar the trial of the appellants for the distinct offence under Section 353 of the Indian Penal Code, though it is practically based on the same facts as for the prosecution under Section 186 of the Indian Penal Code.*

7. Reference may be made, in this connection, to the decision of the Federal Court in ***Hori Ram Singh v. Crown [(1939) FCR 159]***. The appellant, in that case, was charged with offences under Sections 409 and 477-A of the Indian Penal Code. The offence under Section 477-A could not be taken cognisance of without the previous consent of the Governor under Section 270(1) of the Constitution Act, while the consent of the Governor was not required for the institution of the proceedings under Section 409 of the Indian Penal Code. The charge was that the accused dishonestly misappropriated or converted to his own use certain medicines entrusted to him in his official capacity as a sub-assistant surgeon in the Punjab Provincial Subordinate Medical Service. He was further charged that being a public servant, he wilfully and with intent to defraud, omitted to record certain entries in a stock book of medicines belonging to the hospital where he was employed and in his possession. The proceedings under Section 477-A were quashed by the Federal Court for want of jurisdiction, the consent of the Governor not

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having been obtained, but the case was sent back to the Sessions Judge for hearing on the merits as regards the charge under Section 409 of the Indian Penal Code, and the order of acquittal passed by the Sessions Judge under that charge was set aside. Two distinct offences having been committed in the same transaction, one an offence of misappropriation under Section 409 and the other an offence under Section 477-A, which required the sanction of the Governor, the circumstance that cognisance could not be taken of the latter offence without such consent was not considered by the Federal Court as a bar to the trial of the appellant with respect to the offence under Section 409.

8. We have expressed the view that Section 195 of the Criminal Procedure Code does not bar the trial of an accused person for a distinct offence disclosed by the same or slightly different set of facts and which is not included within the ambit of the section, but we must point out that the provisions of Section 195 cannot be evaded by resorting to devices or camouflage. For instance, the provisions of the section cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, on the ground that the latter offence is a minor one of the same character, or by describing the offence as one punishable under some other section of the Indian Penal Code, though in truth and substance the offence falls in the category of sections mentioned in Section 195 of the Criminal Procedure Code. Merely by changing the garb or label of an offence, which is essentially an offence covered by the provisions of Section 195, prosecution for such an offence cannot be taken cognisance of by misdescribing it or by putting a wrong label on it. On behalf of the appellants, Mr Garg suggested that the prosecution of the appellants under Section 353 of the Indian Penal Code was by way of evasion of the requirements of Section 195 of the Criminal Procedure Code. But we are satisfied that there is no substance in this argument, and there is no camouflage or evasion in the present case." (emphasis supplied)

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14. It was laid down by the Hon'ble Supreme Court in ***C.Muniappan & others (supra)*** that the Court cannot take cognisance of the commission of an offences prescribed under Section 195 of Cr.P.C., but there is nothing to prevent the Court from taking cognizance of other offences which were committed in the course of the same transaction.

> "35. Undoubtedly, the law does not permit taking cognisance of any offence under Section 188 IPC unless there is a complaint in writing by a competent public servant. In the instant case, no such complaint had ever been filed. In such an eventuality and taking into account the settled legal principles in this regard, we are of the view that it was not permissible for the trial court to frame a charge under Section 188 IPC. However, we do not agree with the further submission that the absence of a complaint under Section 195 CrPC falsifies the genesis of the prosecution case and is fatal to the entire prosecution case.
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> 36. There is ample evidence on record to show that there was a prohibitory order which had been issued by the competent officer one day before it had been given due publicity and had been brought to the notice of the public at large; it has been violated as there is no denial even by the accused persons that there was no "Rasta Roko Andolan". Unfortunately, the agitation, which initially started peacefully, turned ugly and violent when the public transport vehicles were subjected to attack and damage. In such an eventuality, we hold that in case the charges under Section 188 IPC are quashed, it would by no means have any bearing on the case of the prosecution so far as the charges for other offences are concerned."

15. Thus, the plea that the learned Trial Court could not have taken cognisance of the commission of an offence punishable under Section 186 of IPC has to be accepted as correct. However, the

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proceedings pending before the learned Judicial Magistrate cannot be said to be bad because the other offences were also disclosed, which did not require a complaint by a competent officer.

16. It was submitted that Kalandra, filed by the police, does not disclose the commission of any offence and does not fall within the definition of a complaint. This submission is only stated to be rejected; the term 'complaint' has been defined under Section 2(d) of Cr.P.C. as an allegation made orally or in writing to the learned Magistrate with a view to his taking action under the CrPC that some person had committed an offence. In the present case, the allegation in the Kalandra shows that the accused had committed the offences punishable under Sections 353 and 332 of IPC by using criminal force on the public officials in the discharge of their public duties as well as causing hurt to one Sanjay Kumar. The allegations were made with a view to take action against the accused and the same will fall within the definition of complaint.

17. The submission that the status report does not meet the allegations made in the petition and the respondent/State should be directed to file a reply dealing with the allegations cannot be accepted. A party is free to decide the pleading, which it has to make before the

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Court and the Court cannot direct any of the parties to take a particular plea in its pleadings. If the respondent/State does not want to file a detailed reply meeting the allegations in the petition, the Court has to decide the matter as per the pleadings before it and not direct the party to take any particular plea; therefore, this submission is rejected.

18. No other point was urged.

19. In view of above, the proceedings pending before learned Judicial Magistrate First Class, Dehra, District Kangra, H.P. cannot be quashed. Consequently, the present petition fails, and the same is dismissed, so also the pending applications, if any.

20. The observation made hereinabove shall remain confined to the disposal of the petition and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla)
Judge

***29th November*, 2024**
(ravinder)