

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. MMO No. : 1079 of 2022****Reserved on : 01.12.2025****Decided on : 30.12.2025**

Ramesh Kumar & Others

...Petitioners

Versus

State of H.P. & Others

...Respondents

*Coram***The Hon'ble Mr. Justice Virender Singh, Judge.***Whether approved for reporting?*¹ **Yes.**

For the petitioners : Mr. Rajiv Rai, Advocate.

For the respondents : Mr. Mohinder Zharaick and Mr. H.S. Rawat, Additional Advocates General with Mr. Rohit Sharma, and Ms. Ranjna Patial, Deputy Advocates General, for respondents No.1 and 2.

Mr. Ajay Chauhan, Advocate, for respondent No.3.

Virender Singh, Judge

Petitioners have filed the present petition, under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.PC'), for quashing of FIR No.42/2021, dated 11.10.2021, (hereinafter referred to as the FIR, in question) registered, under Sections 354 and 506 of the Indian Penal Code (hereinafter referred to as 'the IPC'), with Police Station Renukaji, District Sirmaur, H.P., as well as,

¹ *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

the proceedings resultant thereto, pending in the Court of learned Judicial Magistrate First Class, Nahan (hereinafter referred to as 'the trial Court'), by way of Police Challan No.232 of 2021, titled as State of H.P. versus Parth Goel & Others.

2. The relief of quashing has been sought on the ground that the FIR, in question, has been lodged at the instance of respondent No.3, whereas, according to them, petitioner No.1 and father of respondent No.3, had a boundary dispute, as their lands are adjacent to each other.

3. According to the petitioner, in order to resolve the said dispute, petitioner No.1, had moved an application dated 30.09.2021 for the demarcation of the land. During the pendency of the application for demarcation, the father of respondent No.3, started raising boundary wall, without waiting for the outcome of the demarcation application.

4. It is the further case of the petitioners that on 11.10.2021, respondent No.3, along with mason and labourers, reached on the spot and started raising boundary wall, upon which, petitioner No.1, made a call to the father of respondent No.3 at about 10.00 a.m. on

11.10.2021 and requested him not to raise any boundary wall on the disputed portion till the demarcation is conducted, however, on phone, father of respondent No.3, misbehaved with petitioner No.1 and got adamant to raise the boundary wall.

5. It is the further case of the petitioners that the said conversation has been recorded and transcript of the same is Annexure P-2. Thereafter, the petitioners reached on the spot and asked the mason and labourers to stop the work, as demarcation of the land has not yet been taken place, but, respondent No.3 started hurling abuses to the petitioners and instead of involving themselves in confrontation, petitioner No.2, inform the police and sought police help. Thereafter, the police entered said information in General Diary No.11, dated 11.10.2021.

6. Petitioners had also relied upon the General Diary Entry No.12, dated 11.10.2021, recorded at 3.34.40 p.m., Annexure P-5. On the basis of the said General Diary entry, it has been pleaded that police has visited the spot and inquired the matter as per General Diary No.12 and had stated before the Police that they will resolve the issue

and till the demarcation of the land, they will not carry out construction. Relied upon the General Diary entry No.12, it is the further case of the petitioners that a concocted story of the alleged incident, which had taken place at 9.30 a.m., has been introduced.

7. It is the further case of the petitioners that no case is made out against them and the FIR, in question, has been lodged just to harass them on account of the dispute with regard to the demarcation of the land and the FIR, in question, is stated to be lodged, just to blackmail the petitioners, so that they may give up. As such, according to the petitioners, the FIR is nothing, but, abuse of process of law.

8. On the basis of the above facts, the FIR, in question, has been sought to be quashed.

9. When put to notice, the police filed the reply, by taking the preliminary objections that respondent No.3, lodged the case FIR incident dated 11.10.2021, against the petitioner by alleging that her father is having land in upper Bazar Dadahoo, which is lying vacant, for the last 80 years and they were getting the boundary wall constructed and

also doing the repair of the shops then, at about 9.30 a.m, when labourer and mason were working there, then Parth Goel came there and threatened the labourers and forced them to leave the said place.

10. When the complainant prevented accused Parth Goel to do so, he caught hold her Chunni with bad intention. Thereafter, he threatened her that in case, they will execute the work, then, he can go to any extent. He has threatened her to leave the place by stating that she can ask from anyone that who he is. In the meanwhile, Ramesh Kanoongo and his wife came there and on seeing her all alone, threatened her.

11. On the basis of the above facts, the complainant has expressed her apprehension that she is residing alone and feeling danger to her life from the accused persons.

12. On the basis of the above facts, according to the stand taken by the police, FIR, in question, was registered and the criminal machinery swung into motion. The police has filed the charge-sheet, which is pending in the learned trial Court.

13. It is the further case of the police that the allegations against petitioner No.2 are very serious as, according to the complainant, when she prevented accused Parth Goel to do so, he has pulled her *dupatta* to outrage her modesty.

14. Other factual position, as mentioned, in the Daily Diary Report has not been disputed.

15. On the basis of the above facts, a prayer has been made to dismiss the petition.

16. Scope of Section 482 Cr.P.C., has elaborately been discussed by the Hon'ble Apex Court, in the year 1992, in the lead case reported as **1992 CrLJ, 527**, titled as **State of Haryana Vs. Chaudhary Bhajan Lal & Others**, in which, the Hon'ble Apex Court has formulated the guidelines for exercising the powers under Section 482 Cr.P.C. Relevant paragraph 107 of the judgment is reproduced as under:-

"107. 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 with 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 FLR 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 private and personal grudge.”

17. This view has again been reiterated by a three Judge Bench of the Hon’ble Apex Court in **Neeharika Infrastructure Pvt. Ltd. Versus State of Maharashtra & Others, 2021 SCC Online SC 315**. Relevant paragraph 38 of the judgment is reproduced as under:-

38. In the case of *Golconda Lingaswamy (supra)*, after considering the decisions of this Court in the cases of *R.P. Kapur (supra)* and *Bhajan Lal (supra)* and other decisions on the exercise of inherent powers by the High Court under Section 482 Cr.P.C., in paragraphs 5, 7 and 8, it is observed and held as under:

“5. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three

circumstances under which the inherent jurisdiction may be exercised, namely: (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid aliique concedit, conceditur et id sine quo res ipsa esse non potest* (when the law gives a person anything, it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action

which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

7. In dealing with the last category, 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 clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.....

8. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest court of a State should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See *Janata Dal v. H.S. Chowdhary* [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892] and *Raghubir Saran (Dr.) v. State of Bihar* [AIR 1964 SC 1 : (1964) 1 Cri LJ 1].] It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the

Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint/FIR 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 or disclosed in the FIR that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/FIR is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an 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 themselves be the basis for quashing the proceeding.”

18. In view of the guidelines, as laid down, by the Hon’ble Apex Court, this Court would proceed to discuss the stand, as taken by the petitioner, in the present petition.

19. In order to decide the petition, effectively, only those documents can be considered, the veracity of which

is beyond challenge or the documents, which are not in dispute.

20. It is no longer *res integra* that at the time of deciding the petition under Section 482 Cr.PC, this Court cannot assume the powers of the appeal/revisional Court, nor this Court can act as trial Court. While holding so, the view of this Court is being guided by the decision of Hon'ble apex Court in ***Chilakamarthi Venkateswarlu & Another versus State of Andhra Pradesh & Another, (2019) 10***

Scale 239. Relevant paragraph 15 of the judgment is reproduced as under:-

“15. In exercising jurisdiction under Section 482 it is not permissible for the Court to act as if it were a trial Court. The Court is only to be prima facie satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate materials and documents on record, but it cannot appreciate the evidence to conclude whether the materials produced are sufficient or not for convicting the accused.”

21. Similar view has also been taken by the Hon'ble Apex Court in ***S.W. Palanikar & Others versus State of Bihar & Another, (2002) 1 Supreme Court Cases, 241.***

22. At the time of deciding the petition, only *prima facie* case is to be seen and the truthfulness of the allegations are not to be seen. Reference in this regard can be made to the decision of Hon'ble Apex Court in ***Rajiv Thapar & Others versus Madan Lal Kapoor, (2013) 3 SCC, 330.***

23. Before proceeding further, this Court has to see whether, the documents, relied upon by the parties, can be taken into consideration or not.

23. In this case the petitioners have relied upon certain documents. Annexure P-1, is the application, for demarcation, Annexure P-2 is the CD, allegedly containing conversation between the parties. Annexure P-3 is General Diary Entry No.11, dated 11.10.2021, which was recorded at 1.42.01 p.m. Annexure P-4, is the copy of General Diary No.12, dated 11.10.2021, recorded at 03.34.40 p.m.

24. Being guided by the legal proposition, as referred to above, the documents, veracity of which is beyond challenge or the documents, which are not in dispute, can be taken in to consideration. As such, the rapat Rojnamcha Annexures P-3 and P-4 can be taken into

consideration, whereas, the CD, containing the alleged conversion is not liable to be taken into consideration.

25. The boundary dispute even has not been disputed by respondent No.3, in the FIR, as it has been mentioned that on the day of incident i.e. 11.10.2021, when repair of the boundary wall and shops was going on, then at about 9.30 a.m., petitioner No.2, came there and started threatening the labourer working there. When the complainant allegedly requested him not to do so, then, he has caught hold her Chunni with bad intention and also threatened her.

26. The case has been registered under Sections 354, and 506 IPC. The provisions of Sections 354 and 506 IPC are reproduced as under:-

354. Assault or criminal force to woman with intent to outrage her modesty.—

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.

Section 506 Punishment for criminal intimidation, making it an offense to threaten someone with injury, death, or property damage to cause fear or alarm, punishable by up to two

years in jail, fine, or both, with stricter penalties (up to seven years) for threats involving grievous hurt, death, or serious property destruction, and it's generally considered a serious offense but can allow for bail, depending on circumstances.

28. In this background, respondent No.3, was also produced before the Court of learned Judicial Magistrate First Class Nahan, where her statement, under section 164 Cr.PC, was recorded, wherein she has stated that when she had prevented petitioner No.2, from threatening the labourer, then he has pulled her Chunni and started looking at her with bad intention.

29. The complainant, in her statement, recorded, under Section 161 Cr.PC, has also got recorded that accused Parth Goel, came nearer to her and pulled her Chunni and stated that leave the place, otherwise, inquire from anyone, who he is.

30. From the statement of respondent No.3, the ingredients of Section 354 IPC are not made out, in this case, as, Hon'ble Supreme Court in **Raju Pandurang Mahale versus State of Maharashtra & Another, AIR 2003 Supreme Court 1677**, has elaborately discussed the

provisions of Section 354 IPC. Relevant paragraphs 12 to 15 of the judgment, are reproduced, as under:-

"12. What constitutes an outrage to female modesty is nowhere defined. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty in this Section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. The act of pulling a women, removing her saree, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object. As indicated above, the word 'modesty' is not defined in IPC. The shorter Oxford Dictionary (Third Edn.) defines the word 'modesty' in relation to woman as follows:

"Decorous in manner and conduct; not forward or lowe; Shame-fast: Scrupulously chaste."

13) Modesty is defined as the quality of being modest; and in relation to woman, "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct." It is the reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions. As observed by Justice Patterson in Rex v. James Llyod, (1876) 7 C & P 817. In order to find the accused guilty of an assault with intent to commit a rape, court must be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person but that he intended to do so at all events, and notwithstanding any resistance on her part. The point of distinction between an offence of attempt to commit rape and to commit indecent assault is that there should be some

action on the part of the accused which would show that he was just going to have sexual connection with her.

14) Webster's Third New International Dictionary of the English Language defines modesty as "freedom from coarseness, indelicacy or indecency, a regard for propriety in dress, speech or conduct". In the Oxford English Dictionary (1933 Edn.), the meaning of the word 'modesty' is given as "womanly propriety of behaviour: scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions."

15) In State of Punjab v. Major Singh, AIR (1967) SC 63 a question arose whether a female child of seven and a half months could be said to be possessed of 'modesty' which could be outraged. In answering the above question the majority view was that when any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind that must fall within the mischief of Section 354 IPC. Needless to say, the "common notions of mankind" referred to have to be gauged by contemporary societal standards. It was further observed in the said case that the essence of a woman's modesty is her sex and from her very birth she possess the modesty which is the attribute of her sex. From the above dictionary meaning of 'modesty' and the interpretation given to that word by this Court in Major Singh's case (supra) the ultimate test for ascertaining whether modesty has been outraged is whether the action of the offender is such as could be perceived as one which is capable of shocking the sense of decency of a woman. The above position was noted in Rupan Deol Bajaj (Mrs.) and Anr. v. Kanwar Pal Singh Gill and Anr., [1995] 6 SCC 194. When the above test is applied in the present case, keeping in view the total fact situation, the inevitable conclusion is

that the acts of accused appellant and the concrete role he consistently played from the beginning proved combination of persons and minds as well and as such amounted to "outraging of her modesty" for it was an affront to the normal sense of feminist decency. It is further to be noted that Section 34 has been rightly pressed into service in the case to fasten guilt on the accused- appellant, for the active assistance he rendered and the role played by him, at all times sharing the common intention with A-4 and A-2 as well, till they completed effectively the crime of which the others were also found guilty."

31. In the present case, petitioner No.2, allegedly reached on the spot to prevent the workers engaged by respondent No.3 to carry out the construction/repair of boundary wall and shop. When, respondent No.3 prevented him to do so, then, he allegedly pulled her Chunni with wrong intention and thereafter, threatened her to go upto any extent and also threatened her to leave the spot.

32. These allegations, if seen in the background of the alleged controversy, between the petitioners and respondent No.3, then the alleged act of dragging Chunni is too short to constitute the offence under Section 354 IPC. There is nothing in the FIR that petitioner No.2, had touched her body to demonstrate his intention to outrage her modesty.

33. The FIR, in question was lodged by respondent No.3, at 7.30 p.m. on 13.10.2021, whereas the General Diary No.11, was recorded on that day at 01.42.01 p.m., on the basis of the information given by petitioner No.2 to the police, in which, he has alleged that respondent No.3, has threatened to kill him, upon which, HC Sangeet Kumar No.350, was informed, who, as per this rapat, was already on patrolling duty.

34. Thereafter, said HC Sangeet Kumar, got recorded General Diary No.12, dated 11.10.2021, at about 3.34.40 p.m., disclosing therein, that after receipt of the information from the Police Station, he has reached at the spot, where Parth Goel (petitioner No.2) and Kapila (petitioner No.3) were found present and stated that they will get the matter solved and till the demarcation of the land, they will not do any construction work, in their respective land, upon which, telephonic information was given to Control Room, Nahan.

35. General Diary Nos.11 and 12 were got recorded by the police officials, in discharge of their official duty and as per the provisions of Section 35 of The Indian Evidence

Act, a statutory presumption of correctness attaches to it. Provisions of Section 35 of The Indian Evidence Act, are reproduced, as under:-

35. Relevancy of entry in public record made in performance of duty.— An entry in any public or other official book, register or 2 [record or an electronic record], stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or 2 [record or an electronic record], is kept, is itself a relevant fact.

36. When, on the information of petitioner No.2, the police reached at the spot, then, whatsoever recorded in Annexure P-4, that too, prior to lodging of FIR, cannot be ignored and as such, it can be said that the stand taken by the petitioners, qua the fact that the present FIR is nothing, but, counter blast to the act of the petitioners to get their land demarcated, cannot be ruled out, completely, in this case.

37. Considering the above facts, the petitioners are able to bring their case within the purview of guideline No.7, as enumerated by Hon'ble Supreme Court in **Chaudhary Bhajan Lal's** case (*supra*).

38. If the proceedings, in such type of cases, are permitted to continue against the petitioners, it would be nothing, but, abuse of process of law, as, it seems that FIR has been lodged on account of the civil dispute, by giving a coloured version to the minor altercation.

39. In view of the discussion made above, this Court is of the view that it is a fit case, where, the FIR, as well as, the resultant proceedings, pending before the learned trial Court is liable to be quashed, by exercising the powers under Section 482 Cr.PC.

40. Consequently, the present petition is allowed and the FIR, in question, as well as, the proceedings, resultant thereto, are ordered to be quashed.

41. Pending application(s), if any, shall also stand disposed of.

(Virender Singh)
Judge

December 30, 2025 *(ps)*