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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

05

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Reserved on: 07.08.2026

Pronounced on: 11.09.2026

GIAN CHAND GUPTA

..... PETITIONER

VERSUS

STATE OF HARYANA AND ANR.

..... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SURYA PARTAP SINGH

Present : Mr. D.S. Adlakha, Advocate
for the petitioner.

Mr. Vishal Singh, AAG, Haryana.

Mr. Manjeet Singh, Advocate
for the respondent No.2.

SURYA PARTAP SINGH. J.

1. This is a petition filed by the petitioner under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, hereinafter being referred to as BNSS.
2. By virtue of this petition, the petitioner has sought three reliefs:-
 - i. quashing of criminal complaint No.COMI No.161 of 2016 titled as 'Banwari Lal Vs. Jai Bhagwan Gondia & Ors.'
 - ii. quashing of summoning order dated 23.01.2023 passed in the above-mentioned complaint.
 - iii. quashing of order dated 04.07.2023, whereby the application filed by the petitioner seeking for exemption from physical appearance in the Court, on each and every date, has been dismissed.



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3. In nut-shell the facts emerging from record are that for the commission of offence punishable under Sections 499, 500, 166, 167, 217, 218 and 120-B of Indian Penal Code, a complaint, i.e. complaint No.COMI No.161 of 2016 titled as 'Banwari Lal Vs. Jai Bhagwan Gondia & Ors.' is pending in the Court of learned trial Court. In the above-mentioned complaint, the petitioner has been summoned as an accused.

4. First of all this order will deal with challenge to the order dated 04.07.2023, hereinafter being referred to as impugned order. The record reveals that in the above-mentioned petition the petitioner had filed an application seeking for exemption from personal appearance on each and every date. However, by virtue of order dated 04.07.2023, hereinafter being referred to as impugned order, the above-mentioned application has been dismissed.

5. The second aspect to be dealt with in this order is the prayer for quashing of complaint dated 17.09.2016 and the summoning order dated 23.01.2023.

6. Aggrieved of the above-mentioned complaint and orders, the present petition has been filed on the ground that the present complaint has been filed on false and frivolous allegations and the learned trial Court has committed an error, while passing the summoning order, and also the order dismissing the application for exemption from physical appearance filed by the petitioner.

7. Heard.

8. As far as the prayer for quashing of the order dated 04.07.2023 is concerned, the learned counsel for the petitioner has submitted that petitioner at the time of filing of application in the year 2023, was a 73 years old retired

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public servant, and that with regard to an act done by the petitioner in his capacity as public servant, he was summoned as an accused. According to learned counsel for the petitioner, the petitioner has been summoned to face trial at Yamuna Nagar, whereas after retirement he has settled at Faridabad. The learned counsel for the petitioner has further contended that being old age person, the petitioner is suffering from old age ailments. As per learned counsel for the petitioner in view of old age ailments and age related issues, it is very very difficult for the petitioner to travel from Faridabad to Yamuna Nagar and participate in the Court proceedings on each and every date.

9. In addition to above, it has also been contended by learned counsel for the petitioner that in the above-mentioned complaint, the petitioner has engaged a counsel, and that his counsel has been representing the petitioner before the learned trial Court during the course of trial. As contended by learned counsel for the petitioner since there is no issue with regard to identification of petitioner in the Court, his physical presence in the Court, on each and every date, is merely a formality. While claiming that physical presence of petitioner is not likely to have any impact on the proceedings of the case, it has been contended by learned counsel for the petitioner that personal appearance of the petitioner on each and every date should have been exempted by the learned trial Court, but the learned trial Court, while adopting a very harsh approach, has illegally refused the above-mentioned concession to the petitioner. As per learned counsel for the petitioner, the above-mentioned approach of learned trial Court is contrary to the principles of natural justice, particularly in view of the fact that the petitioner has no objection, if the complainant's evidence is recorded in his absence.



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10. On the basis of above-mentioned arguments, the learned counsel for the petitioner has contended that instant case is a fit case, wherein the extraordinary jurisdiction vested in this Court should be exercised, to check the miscarriage of justice. Thus, it has been contended, by learned counsel for the petitioner, that by quashing the impugned order, the application filed by the petitioner seeking for exemption from appearance in the Court on each and every date, be allowed. As per learned counsel for the petitioner, similar benefit has been accorded by the learned trial Court to the similarly placed co-accused.

11. As far as the prayer for quashing of criminal complaint No.COMI No.161 of 2016, and quashing of summoning order dated 23.01.2023 passed in the above-mentioned complaint, are concerned, the learned counsel for the petitioner has come forward with 3 fold arguments.

- i. that contents of the complaint itself are based on false and frivolous allegations having no iota of truth. According to learned counsel for the petitioner, there is no reliable evidence to support the allegations *prima facie* contained in the complaint, and therefore, the complaint is not maintainable. Thus, it has been contended by learned counsel for the petitioner that the complaint itself vis-a-vis the summoning order passed therein deserves to be quashed.
- ii. The next issue raised by learned counsel for the petitioner is that the petitioner has been summoned vide order dated 23.01.2023 to face trial for the commission of offence punishable under Sections 499, 500, 166, 167, 217, 218 and 120-B. As per learned counsel for the petitioner the



maximum punishment prescribed for all the abovementioned offences is imprisonment up to three years. As per learned counsel for the petitioner since the alleged incident had taken place in the year 2009 and the complaint was filed in the year 2016, i.e. after the expiry of more than six years, after his retirement. Thus the cognizance on complaint in the above-mentioned matter was barred by limitation, in view of Section 468 (c) Cr.P.C.

- iii. It has also been contended that the alleged act attributed to the petitioner pertained to the official discharge of public duty of the petitioner, and therefore, without obtaining requisite sanctions from appropriate authority, as prescribed under Section 197 of Cr.P.C. the cognizance against the petitioner could not have been taken.

12. In view of above-mentioned grounds, it has been contended by learned counsel for the petitioner that the summoning order passed by the learned trial Court is defective and unsustainable, and that the complaint itself being suffering from above-mentioned defects, deserves to be quashed.

13. In support of his arguments, the learned counsel for the petitioner has placed reliance upon the principles of law laid down by the Hon'ble Supreme Court of India in the cases of 'State of Punjab vs. Labh Singh 2015(3) SCC(Crl) 601', 'Sanapareddy Maheedhar and Another vs. State of Andhra Pradesh and Another 2009(1)SCC(Crl) 170', 'Puneet Dalmia vs. Central Bureau of Investigation, Hyderabad, 2020(12) SCC 695' and by Madhya Pradesh High Court in the case of 'Guddi Bai vs. State of M.P. 2014(48) RCR (Criminal)

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218'. In addition to above the reliance has also placed upon the principles laid down by this Court in the case of 'M/s Doaba Seed Store and another vs. State of Punjab 2019(2) AICLR 725' and 'Arun B. Deshpande vs. M/s Vipin Oil Extraction (P) Ltd. & Anr. 2003(1) CLJ (Criminal) 170'.

14. In view of above-mentioned contentions, it has been argued by learned counsel for the petitioner that filing of complaint by the respondent No.2 vis-a-vis summoning order passed in the above-mentioned complaint are nothing but an abuse of process of law, and therefore, there is need for indulgence in the impugned order, by exercising the extraordinary jurisdiction vested in this Court by virtue of Section 528 of BNSS.

15. The learned State counsel being assisted by learned counsel for the respondent No.2 has controverted the above-mentioned arguments. With regard to prayer for seeking exemption from personal appearance, it has been contended by learned counsel for the respondent No.2 that a false, frivolous and baseless ground has been created by the petitioner just to seek exemption from appearing in the Court on each and every date. According to learned counsel for the respondent No.2, the Code of Criminal Procedure prescribes that every accused is supposed to be present in the Court during the course of trial and that the same provisions of law are applicable to the present petitioner himself.

16. It has been further contended by learned counsel for the respondent No.2 that the cause of action for filing the complaint had accrued within the territorial jurisdiction of District Yamuna Nagar, and therefore, the complaint has been filed by the respondent in a Court, exercising jurisdiction in Yamuna Nagar District. As per learned counsel for the respondent No.2 simply because



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the petitioner has shifted his residence to some other district cannot be a ground to seek exemption from personal appearance on each and every date.

17. While defending the impugned order, it has been contended by learned counsel for the respondent No.2 that a false ground has been created by the petitioner, and that no illegality, whatsoever has been committed by the learned trial Court by denying the concession, sought by petitioner, i.e. exemption from appearing in the Court on each and every date of hearing.

18. The learned State counsel being assisted by learned counsel for the respondent No.2 has controverted the arguments for quashing of criminal complaint and quashing of summoning order, also. It has been contended by learned counsel for the respondent No.2 that a proper view has been taken by the learned trial Court in the exercise of jurisdiction vested in trial Court. According to learned counsel for the respondent No.2 the alleged act attributed to the petitioner was not within the ambit of his official duties, and therefore, in view of principles of law laid down by Hon'ble Supreme Court of India in the cases of 'Shadakshari vs. State of Karnataka and Others 2024 INSC 42', 'Om Parkash Yadav vs. Niranjana Kumar Upadhyay etc. 2024 INSC 979', and 'Shambhoo Nath Mishra vs. State of U.P. AIR 1997 Supreme Court 2102' and by this Court in the case of 'Bant Singh Benipal vs. State of Punjab and Another Law Finder Document ID:2248813', there was no requirement of sanction under Section 197 Cr.P.C.

19. It has been further contended by learned counsel for the respondent No.2 that in view of serious nature of offence allegedly committed by the petitioner, he cannot invoke the bar of limitation. According to learned counsel for the respondent No.2 under Section 468 of Cr.P.C. the above-mentioned bar



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is not an absolute bar, and that it is within the jurisdiction of learned trial Court to extend the limitation period for sufficient cause in view of Section 473 Cr.P.C. As per learned counsel for the respondent No.2, valid and justified ground for extension of limitation period were existing in the instant case and that the same were duly considered by the learned trial Court.

20. The record has been perused carefully.

21. In view of factual matrix of the present case, in my considered opinion, following are the relevant factors, which are required to be taken into consideration for deciding the third relief in the present petition:-

- i. that the petitioner is approximately 74 years old person;
- ii. that after retirement he has settled at Faridabad and the trial is taking place at Yamuna Nagar. The distance between the two places is approximately 200 kms;
- iii. that there is no dispute qua the identity of the petitioner, and therefore, the petitioner is not to be identified by complainant/prosecution witnesses during the course of trial;
- iv. that the petitioner is being represented by his counsel on each and every date;
- v. that the petitioner has no objection, if the complainant/prosecution evidence is recorded in his absence;
- vi. that the physical presence of petitioner in the Court on each and every date is not going to prejudice the cause of the



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respondent/complainant, or the cause of justice, in any manner, whatsoever.

22. In view of above-mentioned observations, it is hereby hold that there is need for exercise of extraordinary jurisdiction vested in this Court by virtue of Section 482 of Cr.P.C. Hence, by invoking the above-mentioned jurisdiction, it is hereby held that the impugned order, which is apparently perverse, deserves to be set aside.

23. As a sequel to above-mentioned observations, the impugned order is hereby set aside. The personal appearance of petitioner on each and very date, during the course of trial is exempted. However, the learned trial Court shall be at liberty to seek personal appearance of the petitioner at the stage of framing of charge and recording of statement of accused under Section 313 Cr.P.C. It is also clarified that during the course of trial, if there is need for physical presence of petitioner on a particular date, the learned trial Court shall be at liberty to pass a specific order, alongwith reasoning, for personal appearance of the petitioner. In addition to above, the learned trial Court shall also be at liberty to seek the presence of petitioner on any such date through video conferencing mode.

24. With regard to relief No.1 and 2 claimed in the petition, it is relevant to note that the first plea raised by the petitioner, i.e. falsity of allegations contained in the complaint, the proper course available under the law is to conduct the trial. During the course of trial when parties would be given opportunities to lead their respective evidence, on appreciation of above-mentioned evidence only it can be determined as to whether allegations contained in the complaint are false or not. Thus, in my considered opinion, on



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the above-mentioned ground, there is no scope for quashing of complaint/summoning order.

25. As far as second plea raised by learned counsel for the petitioner is concerned a perusal of record shows that the petitioner has been summoned to face trial for the commission of offence punishable under Sections 499, 500, 166, 167, 217, 218 and 120-B of IPC. The punishment prescribed for the above-mentioned offences are as under:-

Sr. No.	Sections	Punishments
1	499/500	Imprisonment upto 2 years
2	166	Imprisonment upto 1 years
3	167	Imprisonment upto 3 years
4	217	Imprisonment upto 2 years
5	218	Imprisonment upto 3 years

26. The above-mentioned details shows that the maximum punishment prescribed for the offences allegedly committed by the petitioner is three years. As per Section 468(2) (c) Cr.P.C., the limitation period for taking cognizance for the commission of offence punishable with maximum imprisonment up to three years is three years only. Thus, according to the above-mentioned provisions prescribes that the period of limitation for taking cognizance for the offences allegedly committed by the petitioner, was three years.

27. In the light of above-mentioned bare provisions, if the contents of complaints are looked into, it transpires that the incident in question had taken place before the retirement of respondent No.2/complainant, i.e. in the year 2008. However, the complaint in question was filed on 17.09.2016 and summoning order against the petitioner was passed on 23.01.2023. The above-mentioned facts and figures shows that the complaint was filed against the



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petitioner, and the cognizance was taken by the learned trial Court, much beyond the period of limitation.

28. However, before arriving at any decision qua above-mentioned aspect, this fact cannot be ignored that Code of Criminal Procedure prescribes for extension of period of limitation also. In that regard Section 473 Cr.P.C. prescribes that:-

“Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may make cognizance of an offence after the expiry of the period of limitations, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.”

29. A bare perusal of summoning order dated 23.01.2023 shows that the learned trial Court, while passing the order dated 23.01.2023 did not take into consideration the above-mentioned aspect. The order dated 23.01.2023 nowhere shows that the question of bar of limitation was dealt with by the learned trial Court, or that by finding extraordinary circumstances, the above-mentioned limitation period was extended. Thus, in my considered opinion, the above-mentioned plea raised by the petitioner has got merits.

30. With regard to third plea raised by the petitioner it is relevant to note that it has been alleged by the petitioner that the criminal offence allegedly committed by the petitioner pertained to official discharge of his duties, and therefore, without sanction under Section 197 Cr.P.C. the petitioner could not have been prosecuted. With regard to similar situation, in the case of ‘Labh Singh’ (supra), it was propounded by the Hon’ble Supreme Court of India that protection under Section 197 Cr.P.C. is available to a public servant even after



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retirement. However, on the other hand in the case of 'Shadakshari' (supra), the Hon'ble Supreme Court of India has observed that if accused was involved in preparing forged documents, by exercising his official position as a public servant, the same cannot be treated a part of official duty of such public servant. Similar view has been taken by the Hon'ble Supreme Court of India in the case of 'Shambhoo Nath Mishra' (supra) and by this Court in the case of 'Bant Singh Benipal' (supra).

31. In the light of above-mentioned principles of law, if the contents of summoning order are analyzed, it transpires that in the above-mentioned summoning order this question has not been dealt with by the learned trial Court as to whether the alleged act attributed to the petitioner was part of his official duty or not.

32. Since the issue with regard to bar prescribed under Section 197 of Cr.P.C. has not been dealt with by the learned trial Court and there is no specific finding as to whether the act attributed to the petitioner was part in the official discharge of his duty or not, it is hereby held that the order passed by the learned trial Court on 23.01.2023 with regard to summoning of petitioner is defective on the above-said ground.

33. Taking into consideration, the above-mentioned findings in my considered opinion in view of principles of law laid don by Hon'ble Supreme Court of India in the case of 'Sanapareddy Maheedhar and Another' (supra) this Court has jurisdiction to exercise inherent jurisdiction prescribed under Section 482 of Cr.P.C.

34. As a sequel to above-mentioned observations, it is hereby held that the learned trial Court had committed an error of judgment when it failed to



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discuss the question of bar of limitation, while taking cognizance against the petitioner and also failed to consider whether bar prescribed under Section 197 Cr.P.C was attracted in the instant case or not.

35. Thus, it is hereby observed that the order dated 23.01.2023 passed by the learned trial Court is perverse and deserves to be set aside. The same is hereby set aside. However, the learned trial Court is directed to pass fresh order by considering the above-mentioned two factors. With regard to prayer of petitioner for quashing of complaint, it is hereby observed that on the ground taken in the instant petition, the complaint cannot be quashed at this stage.

36. With the above-mentioned observations, the present petition is hereby **partly allowed** accordingly, i.e. with regard to prayer No.1, detailed in para No.2 of this judgment, the petition is hereby dismissed, whereas with regard to remaining two prayers it is allowed.

(SURYA PARTAP SINGH)
JUDGE

11.09.2026

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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No