

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

CRM-M-39659-2024 (O&M)
Date of decision: 14.08.2024

....Petitioner

Versus

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 528 of Bharatiya
Nagarik Suraksha Sanhita, 2023 (in short BNSS) seeking quashing of FIR
No.189 dated 06.06.2024 under Sections 323/354-A/506 of IPC registered at
Police Station Bhondsi, Gurugram, Haryana (Annexure P-1) and report under
Section 173(2) Cr.P.C. dated 29.06.2024 (Annexure P-2) and all subsequent
proceedings arising therefrom.

Learned counsel for the petitioner *inter alia* contends that there is a delay of 10 days in the registration of the FIR (*supra*) which clearly dents the case set up by the prosecution. In fact, the petitioner is a whistleblower and he has sought information from the Block and Development Officer under the Right to Information Act regarding work and expenses incurred by the complainant who is Sarpanch of Village Ghamroj District Gurugram. Till date, no information has been provided to the petitioner and he has filed an appeal. He further submits that the complainant and her husband pressurized the petitioner to withdraw the representation made by the petitioner in this regard.

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Petitioner has moved representations to the Commissioner of Police which is available on record as Annexures P-8 and P-9. The case set up by the prosecution is too far fetched and implausible and none of the eye witnesses has been cited as a prosecution witness in a final report under Section 173 Cr.P.C. It is further submitted that neither any injury is found in the MLR nor any weapon of offence has been recovered from the petitioner.

Per contra, the learned State counsel submits that all the pleas taken by the petitioner are a matter of trial and it can only be adjudicated upon the evidence led by the parties. This Court while exercising power under Section 428 of BNSS, 2023, cannot decide the disputed question of facts and go into probable defence amplified by the learned counsel for the petitioner in the present petition.

Having heard the learned counsel for the parties and after perusing the record with their able assistance, this Court does not find it proper to adjudicate upon disputed questions of fact while the matter is pending consideration before the learned Court below. The matter requires to be adjudicated by the learned trial Court on the basis of the evidence adduced by the parties and the probable defence as set up by the petitioner cannot be gone into at this stage.

A two Judge bench of the Hon'ble Supreme Court in ***HMT Watches Limited vs. M.A. Abida (2015) 11 SCC 776*** has held that inherent powers under Section 482 of the Cr.P.C. (now Section 528 BNSS) cannot be extended to determining question of facts. It is only for the trial Court to determine the disputed questions of fact after examining the evidence on record and interference by this Court with regards to factual questions is impermissible



A two Judge bench of the Hon'ble Supreme Court in the ***Rathish Babu Unnikrishnan Vs. State (Govt. of NCT) 2022 SCC Online SC 513***, speaking through Justice Hrishikesh Roy, observed as under:

“17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.”

Furthermore, in ***Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited (2016) 10 SCC 458***, a two Judge bench of the Hon'ble Supreme Court, speaking through Justice Adarsh Kumar Goel, made the following observations:

“17. As is clear from the above observations of this Court, it is well settled that while dealing with a quashing petition, the Court has ordinarily to proceed on the basis of averments in the complaint. The defence of the accused cannot be considered at this stage. The court considering the prayer for quashing does not adjudicate upon a disputed question of fact.”

Quite recently, a three-Judge Bench of the Hon'ble Supreme in **'Priyanka Jaiswal vs The State of Jharkhand and Others'**, 2024 All SCR(Cr1.) 1064, speaking through Justice Aravind Kumar, made the following observations: -

“13. We say so for reasons more than one. This Court in catena of Judgments has consistently held that at the time of examining the prayer for quashing of the criminal proceedings, the court exercising extraordinary jurisdiction can neither undertake to conduct a mini trial nor enter into appreciation of evidence of a

*particular case. The correctness or otherwise of the allegations made in the complaint cannot be examined on the touchstone of the probable defence that the accused may raise to stave off the prosecution and any such misadventure by the Courts resulting in proceedings being quashed would be set aside. This Court in the case of **Akhil Sharda 2022 SCC Online SC 820** held to the following effect:*

"28. Having gone through the impugned judgment and order passed by the High Court by which the High Court has set aside the criminal proceedings in exercise of powers under Section 482 Cr.P.C., 1973 it appears that the High Court has virtually conducted a mini trial, which as such is not permissible at this stage and while deciding the application under Section 482 Cr.P.C., 1973 As observed and held by this Court in a catena of decisions no mini trial can be conducted by the High Court in exercise of powers under Section 482 Cr.P.C., 1973 jurisdiction and at the stage of deciding the application under Section 482 Cr.P.C., 1973 the High Court cannot get into appreciation of evidence of the particular case being considered."

Accordingly, the present petition is dismissed.

However, nothing observed herein shall be construed as expression of an opinion by this Court lest it may prejudice the trial. The learned trial Court is directed to proceed with the trial on its own merits, strictly in accordance with law.

Pending applications, if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

14.08.2024
Neha

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