IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No. 785 of 2022
Reserved on: 12.10.2026.
Decided on: 02.11.2026

Surender Singh Deshta .... Petitioner

Versus

State of H.P. & Ors. .... Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] No

For the Petitioner : Mr H.C. Sharma, Advocate.
For the Respondent/State : Mr Jitender Sharma, Additional Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for quashing of the order dated 21.05.2022 passed by the learned Special Judge Shimla, H.P. in case No. 2-5/7 of 2013 titled State vs. Sunil Kumar and Ors vide which the learned Trial Court ordered the framing of charges against the petitioner.

2. Briefly stated, the facts giving rise to the present petition are that short-term loans were being provided to the members of

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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the Scheduled Castes and Scheduled Tribes Safai Karamchari under the NSKFTC Yojana. The beneficiaries failed to return the loans. When enquiries were made about the guarantors, it was found that many of them were not residing at the address furnished by them in their affidavits and work certificates. Some of the guarantors expressed their ignorance regarding the furnishing of the guarantee. The signatures of the DDOs and the certificates issued by them were found to be forged. The police investigated the matter and found that there were various discrepancies in the names of the borrowers and guarantors. Fake documents were produced to secure the loans. The persons who were shown as guarantors had never furnished the guarantees. Many of them were not found serving at the address mentioned in the guarantee deed. The petitioner Surender Singh Deshta is a Notary Public. He had attested the affidavits and guarantee deeds of Shyam Lal, Sunita, Ramesh Kumar, Suresh Kumar, Kishore Kumar, Usha Rani, Kanta Devi, and Jaisi Ram in connivance with Sangeeta, Kashmira, Sunil Kumar, Somnath, and Vijay Kumar. Shyam Lal, Sunita, Ramesh Kumar, Suresh Kumar, and Usha Rani do not serve in the office of the accounts, and they do not reside at the addresses mentioned in the guarantee deed. Kanta Devi and Jaisi Ram did not know Kashmira and Raj Kumar, and they had

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not furnished any guarantee. Kanta Devi and Jaisi Ram had never appeared before Surender Singh Deshta, who had prepared the forged documents in connivance with the beneficiaries. Hence, a charge sheet was filed against Surender Singh Deshta.

3. The petitioner submitted before the learned Trial Court that no cognisance can be taken against him as per Section 13 of the Notaries Act 1952, except upon a complaint made by the officer authorised by the Central or the State Committee. However, the learned Trial Court held that the petitioner had attested forged documents and he could not be discharged from the offences. The State did not press the charges under the Notaries Act, and the charges were ordered to be framed for the commission of offences punishable under Section 193, 419, 420, 467, 468, 471 and 120B of IPC against the petitioner.

4. Being aggrieved by the order framing the charges, the petitioner has filed the present petition asserting that no cognisance could have been taken, and no charges could have been framed against him without the permission of the Central or the State Government. The petitioner had satisfied himself about the authenticity of the documents and had taken proper identification

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from independent persons. The prosecution never asserted that the executants were not identified by a proper person, and only the identifier can be held liable for the wrong identification. The petitioner had not gained anything by attesting the affidavits and guarantee deeds. Therefore, it was prayed that the present petition be allowed and the order passed by learned Trial Court be set aside.

5. I have heard Mr H.C. Sharma, learned Counsel for the petitioner, and Mr Jitender Sharma, learned Additional Advocate General for the respondent/State.

6. Mr H.C. Sharma, learned Counsel for the petitioner, submitted that the petitioner had merely attested the guarantee deed and the affidavit. He is a notary public and bound to attest the documents produced before him for attestation. Executants were properly identified, and the identifier is liable for wrong identification. Section 13 of the Notary Act constitutes a bar from taking cognisance against a notary. The learned Trial Court erred in ignoring the provision of Section 13. Therefore, he prayed that the present petition be allowed and the order passed by the learned Trial Court be set aside.

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7. Mr Jitender Sharma, learned Additional Advocate General for the respondent/State, submitted that the petitioner had attested the documents and facilitated the cheating by the beneficiary. Shyam Lal, Sunita, Ramesh Kumar, Suresh Kumar, and Usha Rani were not found to be residing at the addresses furnished in the affidavits and guarantee deed. Kanta Devi and Jaisi denied that they had executed any affidavit or ever appeared before the petitioner. The allegations in the FIR and the result of investigation *prima facie* show the petitioner's involvement in the commission of the crime and the learned Trial Court had rightly framed the charges against the petitioner. Hence, he prayed that the present petition be dismissed.

8. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

9. It was laid down by the Hon'ble Supreme Court in ***Vishnu Kumar Shukla v. State of U.P., (2023) 15 SCC 502: 2023 SCC OnLine SC 1582,*** that the Court framing the charges has to see a *prima facie* case, and it is impermissible to examine the material threadbare to determine whether the accused is likely to be convicted or not. It was observed:

> "**12.** The primary consideration at the stage of framing of charge is the test of the existence of a prima facie case, and at this stage, the probative value of materials on record need not be gone into. This Court, by referring to its earlier decisions in the ***State of Maharashtra* v. *Som Nath Thapa*, *(1996) 4 SCC 659*** and the ***State of MP* v. *Mohan Lal Soni*, *(2000) 6 SCC 338,*** has held that the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of the prima facie case. It is also held that, at the stage of framing of charge, the court has to form a presumptive opinion on the existence of factual ingredients constituting the offence alleged, and it is not expected to go deep into the probative value of the material on record and to check whether the material on record would certainly lead to a conviction at the conclusion of the trial.

10. It was held in ***Ram Prakash Chadha v. State of U.P.*, *(2024) 10 SCC 651: (2025) 1 SCC (Cri) 253: 2024 SCC OnLine SC 1709*** that the Court can sift and weigh the evidence to determine if a *prima facie* case exists against the accused. It was observed at page 661:

> "**24.** In the light of the decisions referred supra, it is thus obvious that it will be within the jurisdiction of the Court concerned to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused concerned has been made out. We are of the considered view that a caution has to be sounded for the reason that the chances of going beyond the permissible jurisdiction under Section 227CrPC, and entering into the scope of power under Section 232CrPC, cannot be ruled out, as such instances are aplenty. In this context, it is relevant to refer to a decision of this Court in ***Om Parkash Sharma* v. *CBI*, *(2000) 5 SCC 679: 2000 SCC (Cri) 1014***. Taking note of the language of Section 227CrPC, which is in negative terminology, and that the language in Section 232 CrPC is in positive terminology and considering this distinction between the two, this Court held that it would not be open to the Court,

> while considering an application under Section 227CrPC, to weigh the pros and cons of the evidence, alleged improbability and then proceed to discharge the accused, holding that the statements existing in the case therein are unreliable. It is held that doing so would be practically acting under Section 232 CrPC, even though the said stage has not been reached. In short, though it is permissible to sift and weigh the materials for the limited purpose of finding out whether or not a prima facie case is made out against the accused, on appreciation of the admissibility and the evidentiary value, such materials brought on record by the prosecution are impermissible as it would amount to denial of opportunity to the prosecution to prove them appropriately at the appropriate stage, besides amounting to exercise of the power coupled with obligation under Section 232 CrPC, available only after taking the evidence for the prosecution and examining the accused.

11. It was held in ***Yuvraj Laxmilal Kanther v. State of Maharashtra, 2025 SCC OnLine SC 520,*** that the Court is not to undertake a threadbare analysis of the material but to see if there is sufficient material to frame charges. It was observed:

> "**16.** Section 227 CrPC deals with discharge. What Section 227 CrPC contemplates is that if, upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in this behalf, the judge considers that there are no sufficient grounds for proceeding against the accused, he shall discharge the accused and record his reasons for doing so. At the stage of consideration of discharge, the court is not required to undertake a threadbare analysis of the materials gathered by the prosecution. All that is required to be seen at this stage is that there are sufficient grounds to proceed against the accused. In other words, the materials should be sufficient to enable the court to initiate a criminal trial against the accused. It may be so that at the end of the trial, the accused may still be acquitted. At the stage of discharge, the

> court is only required to consider whether there are sufficient materials that can justify the launch of a criminal trial against the accused. By its very nature, a discharge is at a higher pedestal than an acquittal. Acquittal is at the end of the trial process, may be for a technicality or on the benefit of doubt, or the prosecution could not prove the charge against the accused; but when an accused is discharged, it means that there are no materials to justify the launch of a criminal trial against the accused. Once he is discharged, he is no longer an accused."

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

13. It is undisputed that the petitioner is a notary public. Section 13 of the Notaries Act reads as under:

> **13. Cognizance of offence**. — (1) No court shall take cognisance of any offence committed by a notary in the exercise or purported exercise of his functions under this Act save upon complaint in writing made by an officer authorised by the Central Government or a State Government by general or special order in this behalf.
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> (2) No Magistrate other than a Presidency Magistrate or a Magistrate of the first class shall try an offence punishable under this Act.

14. It is apparent from the bare perusal of the Section that the Court is barred from taking cognisance of any offence committed by a Notary in the exercise of his function under this Act except upon a complaint made by an officer authorised by the Central or the State Government. It is undisputed that the petitioner had attested the affidavits and guarantee deeds in the exercise of the functions

conferred under the Notaries Act; therefore, the provision of Section 13 will apply to the present case. It was laid down by the Bombay High Court in ***Chandmal Motilal Bora v. State of Maharashtra*, *2003 SCC OnLineBom 762: (2004) 2 Mah LJ 41: (2004) 106 (2) Bom LR 521: (2005) 1 Bom CR (Cri) 823***, that when any allegation is made against the notary touching the official purpose, the Criminal Court cannot take cognisance except upon the complaint made in writing. It was observed:

> "10. Therefore, if any allegation is made against a Notary which touches the official performance as a notary, the Criminal Court is forbidden from taking cognisance unless the complaint in writing is made by an officer authorised by the Central Government or State Government by general or special order in this behalf. Therefore, whenever an official act of a Notary comes into the picture, it becomes the duty of the criminal Court to see whether the allegations are directly concerned with his official duty or the performance which he has to do as indicated in section 8 of the Notaries Act. The Court which has been requested to take cognisance of the complaint has to apply its judicial mind and see whether the act which is the subject matter of the complaint is the official act of a Notary or it is an act which is beyond his official performance. Suppose if the notary is alleged to have committed an offence by his act directly in his personal capacity, then there is no need for sanction, because the said act is not connected with his official performance, like an allegation showing that the notary committed murder or the notary assaulted a person for the purposes of causing simple hurt, grievous hurt, etc. If the allegations show that by an act which is not in accordance with the provisions of the Notaries Act, the notary has been alleged to have committed an

offence, there is no need to have a sanction to the complaint in writing of an officer as contemplated by the provisions of section 13 of the Notaries Act. But if the act alleged is touching his official performance, the Court has to be on guard when it has been requested to take cognisance of the allegations against the Notary.

11. If such protection is not granted to the Notary, he would be involved, implicated and roped in, in a number of offences, because a number of documents are being notarised before him in his Notarial register. Some documents may be purporting to be for the offence of cheating, blackmailing or offences related to commercial transactions. He would be involved in a number of offences concerned with the disposal of property, transfer of the property, sale of the property, and exchange of property. He would also be coming into the picture as an accused in a number of offences connected with a number of commercial crimes. A Notary is not supposed to know each and every person before him for the purpose of notifying a document in his Notarial register. He is not supposed to know the truth behind the documents brought before him for entries. He is generally introduced to parties by persons who happen to be persons of his acquaintance. Such a person may be an advocate, a clerk of the advocates, or some persons who are connected with him by his profession as a Notary or by his profession generally as a lawyer. If such protection is not granted to a notary, it would be very difficult for him to work as a notary and members of the public at large would be facing a number of difficulties at every step; with this object, section 13 has been enacted by the Legislature with foresight.

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14. As a special feature of a legitimate precaution which the notary should have, a lawyer should have, while performing his duty as Notary or lawyer, by his profession as such, by his work as such, by his function as such, he is likely to be in near proximity of a probable accused or an accused. In the performance of his duty as such, he is likely to do some act, as requested by such a person, maybe as a client or a person who

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> has come to notarise a document. The advocate or a notary will have to do such an act as requested by that person. At that stage, he may not be known as to what would be the consequences of the document which he has prepared or notarised. Would it be proper to permit such an advocate or a notary to be roped in, in the prosecution, which would be initiated against such a person in future proximity. The reasonable answer would be "no". If such a protection is not granted to such persons, it would be very difficult for them to perform the acts contemplated by the profession of a lawyer or the functions contemplated to be done by a notary. A Criminal Court has to take into consideration the cognisance of such special features if they are indicated by the prosecution or by the complaint of which the criminal Court is requested to take cognisance. The Criminal Court has to consider this aspect if an application is made to exonerate such an accused, who happens to be a professional or performing an official duty. When such a request is made even at the initial stage and if there is a case to act accordingly, the Criminal Court should not be shy in entertaining such an application and even allow it if such application deserves to be allowed. Exactly that has been contemplated in the judgment of the Supreme Court in ***Madhavrao Scindia's case (supra)***.

15. A similar view was taken by the Gujarat High Court in ***Ashokbhai Rameshchandra Ghantivala v. State of Gujarat, 2009 SCC OnLine Guj 2203*** wherein it was observed:

> 8. Heard the learned advocates for the parties. Having regard to the submissions advanced by the learned advocates for the parties, this court is of the view that it is not necessary to enter into the merits of the allegations made in the chargesheet or the F.I.R. as the same could have a bearing on the outcome of the proceedings emanating from the F.I.R. However, examining the main contention raised by the learned advocate for the petitioner, namely, that in view of the provisions of Section 13 of the Act, the court could not have

taken cognisance of the complaint except as provided under the said provision, it would be necessary to refer to the provisions of Section 13 of the Act, which reads as under:

> "13. Cognizance of offence. - (1) No Court shall take cognisance of any offence committed by a notary in the exercise or purported exercise of his functions under this Act save upon complaint in writing made by an officer authorised by the Central Government or a State Government by general or special order in this behalf.
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> (2) No Magistrate other than a Presidency Magistrate or a Magistrate of the first class shall try an offence punishable under this Act."

A plain reading of Section 13 makes it clear that a complaint against a notary in exercise or purported exercise of his functions under the Act has to be made in writing by an officer authorised by the Central Government or the concerned State Government by general or special order in this behalf. Unless a complaint is made in the manner prescribed, no Court is empowered to take cognisance of the offence. This view finds support from the objects and reasons behind the said provision, which reads thus:

> "The Committee consider that protection should be given to notaries in respect of cognisance of offences. They think that protection should be given only to notaries who commit an offence acting or purporting to act in the discharge of their functions under this Act. This clause has been inserted with this object."

From the objections and reasons, it is apparent that even if an offence is committed by a notary while acting or purporting to act in the discharge of his functions under the Act, a complaint can be lodged only as provided under Section 13 of the Act. Thus, any offence committed by a notary acting or purporting to act in the discharge of his functions under the Act would fall within the ambit of the Section, and a Court can take cognisance of such offence only if the complaint is made in the manner laid down in the Section.

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16. Kerala High Court also held similarly in ***P.C. Jeeva v. State of Kerala, 2022 SCC OnLine Ker 8294,*** as under:

> 7. From the perusal of the aforesaid provision, it is evident that a special procedure has been contemplated by virtue of the said provision and it provides that the cognisance of any offence committed by a Notary in exercise or purported exercise of his function under the Notaries Act can be instituted only upon a complaint in writing made by an officer authorised by the Central Government in this behalf. The crucial aspect to be noticed in this regard is that Section 13 of the Act is made applicable to any offence committed by a Notary in the exercise or purported exercise of his functions under this Act. It is evident that irrespective of the question that the offence which is the subject matter is committed under the provisions of the Notaries Act or any other enactment, the procedure as contemplated under Section 13 has to be followed while taking cognisance of an offence against a Notary Public. The aforesaid question came up for consideration before this Court in ***Jyolsana VP. v. State of Kerala [2020 (6) KHC 334]***. In paragraph 11 of the said judgment, this Court made the following observations:
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> > "11. As discussed above, it is quite impossible for a Notary to know the genuineness of the document produced before him for attestation. The Notary is not supposed to know each and every person before him for the purpose of notifying a document in his Notarial Register. He is generally introduced to parties by persons who happen to be persons of his acquaintance. If such protection is not granted to a Notary, it would be very difficult for him to work as a notary and members of the public at large would be facing a number of difficulties at every step. With this object, S. 13 has been enacted by the Legislature as a safeguard."
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> 8. Thus, from the above, it is evident that the stipulation contained under Section 13 is a mandatory provision as far as the offence alleged to have been committed by a Notary Public

> in exercise or purported exercise of his function are concerned. It is also clear that no court can take cognisance of such offences unless the procedure contemplated under Section 13 of the Notaries Act, 1952 is followed. In this case, it is evident that the proceedings have been instituted and cognisance thereon was taken on the basis of a police report, which is not the procedure as contemplated under Section 13 of the Act. In such circumstances, as the procedure which is mandatorily required to be followed under Section 13 of the Act is not complied with, the prosecution now ongoing against the petitioner is vitiated. In such circumstances, I find some force in the contentions put forward by the learned counsel for the petitioner.

17. Karnataka High Court also held similarly in ***Praveen Kumar Adyapady and Ors. vs. State of Karnataka and Ors. (11.04.2022 - KARHC): MANU/KA/2178/2022*** as under:

> 6. Upon hearing and perusal of records, which reveal that accused No. 1 got married to the victim girl and the daughter of this complainant-respondent No. 2, de facto complainant, by producing the affidavit before the Arya Samaj before accused Nos. 7 and 9 and married the victim girl, stating that the victim girl was major and had attained the age of majority by manipulating the date of birth of the victim girl as 25.09.1999, even though her actual date of birth was 25.09.2000. Admittedly, these two petitioners were advocates/notaries, and they have given a declaration in the affidavit filed by the parties. After looking at the documents produced by the parties, of course, while discharging their duty, they have signed and given declarations in the document produced by the parties, but it cannot be said that these petitioners had intentionally colluded with the other accused persons and signed an agreement of declaration for helping the accused No. 1 by manipulating the age of the victim. That apart, as per Section 13 of the Notaries Act, there is a bar to taking cognisance by the Court for offences committed by the

> advocate and notary. Under the said Notaries Act, they have to obtain the permission of the Central Government or State Government for filing the charge sheet and taking cognisance. Admittedly, the petitioners are said to be Notaries of the Central Government. Such being the case, as per Section 13 of the Notaries Act, the sanction is necessary, or permission is necessary before filing a charge sheet and taking cognisance against this petitioner but no such permissions were obtained or produced by the Investigation Officer along with the charge sheet and also not mentioned anything about obtaining of the sanction in the charge sheet. Such being the case conducting criminal proceedings against these petitioners/accused Nos. 8 and 10 requires to be quashed.

18. No precedent to the contrary was brought to the notice of this Court.

19. It is apparent from the bare perusal of the Section and its interpretation by various High Courts that the Court cannot take cognisance of the commission of the offence stated to have been committed by the Notary except upon a complaint made in writing by the officer authorised by the Central or State Government. In the present case, no complaint in writing was ever made by any officer; hence, the learned Trial Court could not have taken cognisance of the commission of the offence alleged against the petitioner. The continuance of the proceedings without the complaint made by the Competent Authority would be an abuse of the process of the Court, and the same cannot be permitted.

20. The petitioner claimed that he had got the executants identified from independent persons. The charge sheet does not mention that the documents were not identified by independent persons. In fact, the record of the learned Trial Court does not contain the affidavits and guarantee deed stated to have been attested by the petitioners. The list of documents annexed to the charge sheet does not mention any affidavits or guarantee deed. The State was allowed to trace the affidavits, but the State was unable to do so. Thus, the petitioner's plea that he had obtained the identification from an independent person and is entitled to the protection of Section 13 of the Notary Act has to be accepted as correct.

21. Therefore, the learned Trial Court erred in taking cognisance and framing the charges.

22. In view of the above, the present petition is allowed, and the order dated 21.05.2022 passed by the learned Special Judge, Shimla, H.P., is ordered to be set aside, and the proceedings are ordered to be quashed qua the petitioner. However, it is expressly made clear that this order will have no effect regarding the other co-accused.

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23. The present petition stands disposed of, and so are the miscellaneous applications, if any.

24. The observations made hereinbefore shall remain confined to the disposal of the petition and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla)
Judge

2nd November, 2026
(Nikita)