IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr.MMO No. 447 of 2026
Reserved on 04.11.2026
Decided on 25.11.2026
Uploaded on 25.11.2026

Amit Singh ... Petitioner

Versus

State of H.P. ...Respondent

Coram

Hon'ble Mr. Justice Chirag Bhanu Singh, Judge.

[1]Whether approved for reporting?

For the petitioner : Mr. Deepak Kaushal, Senior Advocate, with Mr. Abhishek Verma, Advocate.

For the respondent : Mr. Rajpal Thakur, Additional Advocate General, for respondent-State.

Chirag Bhanu Singh, Judge

The petition has invoked the jurisdiction of this Court under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the 'BNSS'), seeking the quashing of FIR No. 09 of 2016, dated 03.04.2016, registered under Sections 411 and

120-B of Indian Penal Code (in short IPC), at Police Station CID, Bharari, District Shimla, H.P., and all the consequential proceedings arising therefrom, pending before the Court of learned Special Judge, Sirmour at Nahan titled as ***State of Himachal Pradesh Vs. Vinay Sharma and Others***., qua the petitioner.

2. The genesis giving rise to the present petition may be briefly summarized thus; the case came to be registered at police Station, State CID, Bharari, Shimla, on the inquiry report of Sub-Inspector Rupinder Kumar, Incharge CID, Crime Unit Nahan, District Sirmour, Himachal Pradesh, having title as "Report regarding criminal involvement/conspiracy of the Officers/officials and management of Indian Technomac Company Limited, Jagatpur, Paonta Sahib, Sirmour and officials of Electricity, Industries and Excise, whereby it came to be recommended that FIR be registered against the persons, named in the FIR. Inquiry report has reference of two letters written by ASI Raghubir Singh, In-charge State CID, sub unit,

Paonta Sahib, wherein it is mentioned that the Indian Technomac Company Limited, Jagatpur, Paonta Sahib, was seized by the Excise and Taxation Department, Sirmour, for default in payment of VAT amounting to Rs. 2100 crores and the management of the company had also connived with the employees of the Excise & Taxation Department posted in District Sirmour and illegally removed material and scrap weighing 40 tons, valuing Rs.50.00 lakh from the company premises during the period of attachment. It also came to be alleged that company management had sold machinery worth Rs.10/15 lakh during the attachment period with the connivance of the officers/officials of Excise and Taxation Department. On 07.03.2015, a truck bearing registration No. HP-17-B-6824, loaded with scrap and cut pieces belonging to Indian Technomac Company Limited, was caught at Jamniwala nakka by the State CID Sub Unit, Paonta Sahib. Since driver of the truck could not produce any documents of loaded material, ETI, Deepak was deputed at the spot by the Assistant

Excise and Taxation Commissioner (AETC), Sirmour, but he failed to take any legal action in the matter till date.

3. It has also been alleged that electric motors of different capacities, worth lakhs, have already been sold from the Company. Copper cables of three furnaces weighing 50/60 tons, had been sold for Rs.2.5 crores against its actual cost of Rs.25-30 crores and only 100-120 Kgs of aluminium scrap was left in the Company in place of 40 tons of aluminium scrap. In the aforesaid background, FIR, as detailed hereinabove, came to be lodged against the petitioner as well as other accused.

4 Precisely, the allegations against the petitioner was that he had received two shredding/cutting machines from one Vivek Gupta, D.G.M alongwith some aluminium scrap. The said machines and the aluminium scrap were stated to be stolen property.

5. It is however the grouse of the petitioner that the entire case of the prosecution revolves around on

alleged attachment order stated to have been passed by the Excise and Taxation Department and the alleged stolen property is stated to have been a part of the attached property. However, no such attachment order has been placed on record, either in the FIR or in the challan submitted before the learned Trial Court. The attachment order and its precise contents were indispensable, as only the attachment order could reveal to whom the property in question has been entrusted. The question of misappropriation could have arisen only thereupon. There is nothing on record to remotely show to whom the Excise and Taxation Department have entrusted the property after the said attachment. Since the prosecution has failed to establish the entrustment of the property the provision under Sections 405 and 406 of IPC also could not be attracted in the facts and circumstances of the present case, as also Section 411 of I.P.C. Moreover, the petitioner while removing the two shredding/cutting machines and some aluminium scrap from the spot had

produced the gate pass and bills under which these machines had been received by the petitioner. The petitioner had purchased the alleged machines and the same had been received by him from the D.G.M of the Company itself and it was duly accompanied by valid bills and gate passes. The petitioner had thus no knowledge that the property was stolen and he had thus acted in good faith.

6. It is further the case of the petitioner that the AETC Sirmaur, Mr. R.D. Janartha, as can also be inferred from the charge-sheet had himself granted permission vide letter dated 07.07.2014, to sell the scrap. The learned counsel for the petitioner would thus further contend that since the scrap had been purchased in pursuance to the permission granted by the Competent Authority, the petitioner cannot be said to have purchased stolen property within the menaning of Section 411 of I.P.C.

7. Per contra, Mr. Rajpal Thakur, learned Additional Advocate General, though fairly admitted

the factum with regard to issuance of letter dated 07.07.2014 by AETC, Sirmaur, whereby he gave permission regarding sale/removal of scrap out of the company, but submitted that aforesaid officer had connived with the petitioner as well as other officers and sold scrap at throwaway price. He submitted that letter dated 07.07.2014 passed by AETC, Sirmaur was against the directions issued by the Commissioner, Excise & Taxation Department, Shimla, whereby entire property of the company was ordered to be attached. However, learned Deputy Advocate General was unable to produce copy of the order of attachment, if any issued by the Commissioner, Excise and Taxation. Learned Additional Advocate General further submitted that once the property, which came to be sold as scrap, was under the entrustment of AETC, Sirmour and fraudulently he in connivance of the petitioner and other persons sold the same at throwaway prices, a case under Sections 409 and 410 of IPC was made out against the Excise Officials and the petitioner. While

referring to Sections 409 and 410 of IPC, learned Additional Advocate General submitted that any misappropriation of property entrusted to official amounts to "stolen property", hence no illegality can be said to have been committed by the investigating agency, while booking petitioner under Sections 411 and 120-B of IPC. He further submitted that otherwise also, present petition is not maintainable because prima facie FIR discloses offences under the aforesaid provisions of law and at this stage, Court, while exercising power under Section 528 of Bharatiya Nagarik Suraksha Sanhita, cannot go into the evidentiary value of the evidence proposed to be led on record.

8. I have heard learned counsel for the parties and have gone through the record carefully.

9. Before ascertaining the correctness and genuineness of the aforesaid submissions and counter submissions made on behalf of learned counsel representing the parties, this Court deems it necessary

to discuss/elaborate the scope and competence of this Court to quash the FIR as well as criminal proceedings, while exercising power under Section 528 of Bharatiya Nagarik Suraksha Sanhita.

10. A three-Judge Bench of the Hon'ble Apex Court in case titled ***State of Karnataka v. L. Muniswamy and others, 1977 (2) SCC 699***, held that High Court while exercising power under Section 482 Cr.PC (now Section 528 of BNSS) is entitled to quash the proceedings, if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed.

11. Subsequently, in case titled ***State of Haryana and others v. Bhajan Lal and others, 1992 Supp (1) SCC 335***, the Hon'ble Apex Court, while elaborately discussing the scope and competence of High Court to quash criminal proceedings under Section 482 Cr.P.C (now Section 528 of BNSS) laid down certain principles governing the jurisdiction of High Court to exercise its

power. After passing of aforesaid judgment, issue with regard to exercise of power under Section 482 Cr.PC (now Section 528 of BNSS), again came to be considered by the Hon'ble Apex Court in case bearing Criminal Appeal No.577 of 2017 (arising out of SLP (CrL.) No. 287 of 2017) titled ***Vineet Kumar and Ors. v. State of U.P. and Anr.***, wherein it has been held that saving of the inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose i.e. court proceedings ought not be permitted to degenerate into a weapon of harassment or persecution.

12. The Hon'ble Apex Court in ***Prashant Bharti v. State (NCT of Delhi), (2013) 9 SCC 293***, relying upon its earlier judgment titled as ***Rajiv Thapar and Ors v. Madan Lal Kapoor, (2013) 3 SCC 330***, reiterated that High Court has inherent powers under Section 482 Cr.P.C (now Section 528 of BNSS), to quash the proceedings against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of

charge, but such power must always be used with caution, care and circumspection. In the aforesaid judgment, the Hon'ble Apex Court concluded that while exercising its inherent jurisdiction under Section 482 of the Cr.PC (now Section 528 of BNSS), Court exercising such power must be fully satisfied that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts and the material adduced on record itself overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. Besides above, the Hon'ble Apex Court further held that material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the Courts may be persuaded it to exercise its power under Section 482 of the Cr.P.C (now Section 528 of BNSS) to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

13. It is quite apparent from the bare perusal of aforesaid judgments passed by the Hon'ble Apex Court from time to time that 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/her due to private and personal grudge, High Court while exercising power under Section 482 Cr.P.C (now Section 528 of BNSS) can proceed to quash the proceedings.

14. Hon'ble Apex Court in case tilted ***Anand Kumar Mohatta and Anr. v. State (Government of NCT of Delhi) Department of Home and Anr, AIR 2019 SC 210***, has held that abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation and as such, the abuse of law or miscarriage of justice can be rectified by the court while exercising power under Section 482 Cr.P.C.

15. Aforesaid law, clearly stipulates that court can exercise power under Section 482 of the Code of

Criminal Procedure (now Section 528 of BNSS), to quash criminal proceedings, in cases, 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.

16. Now being guided by the aforesaid proposition of law laid down by the Hon'ble Apex Court, this Court would make an endeavor to examine and consider the prayer made in the instant petition vis-à-vis factual matrix of the case.

17. What transpires from the record is that the petitioner has merely lifted two shredding/cutting machines and that too after due authorization from Mr. Vivek Gupta, D.G.M. alongwith some aluminium scrap. While removing the aforesaid articles the petitioner had produced the gate passes and bills under which the machinery and the scrap had been received by him. Admittedly, Mr. R.D. Janartha, AETC, Sirmour had issued a communication dated 07.07.2014 granting

permission regarding sale/removal of scrap out of the Company. As per the material on record the said AETC had specifically disclosed in the interrogation that a direction of the Commissioner Excise was with respect to sale of scrap and he had ordered accordingly. Even assuming that the Commissioner Excise had directed the Authorities to stop movement of material and machinery out of the Company premises till the VAT liability was cleared, may not be sufficient to conclude guilt viz-a-viz Section 411 and 120-B of IPC. More particularly because the petitioner had been given the gate passes and the bills by none else, but Vinay Sharma, D.G.M.

18. It further transpires that the directions of the Commissioner which had been purpotedly issued vide letter dated 05.07.2014, calling upon the AETC to spot the movement of material and machinery out of the Company premises had also not seen the light of the day. More particularly seeing to the fact that the machinery and material of the company had allegedly

been attached by the Excise Department and as such the removal of the machinery and material would have been in contravention amounting to theft only if the said attachment order was a part of record. Admittedly, it has not been placed on record, even in the charge-sheet.

19. Learned Additional Advocate General had sought time to place the same on record, but he has in all fairness submitted that no such attachment order could be produced, even by the department. On the very face of it, since no attachment order had been passed by the Excise and Taxation Department the D.G.M of the Company was well within its right to have sold or handed over the material to the petitioner. Since in the facts and circumstances of the case, the material alleged to have been stolen was handed over by the D.G.M himself and that too by way of valid passes and bills, it can safely be concluded that no case muchless a case under Section 411 of IPC or under Section 120-B of IPC could be made out against the petitioner. More

particularly, since the articles allegedly stolen have not been shown or proved to have been under any such attachment, issued by the excise department. De hors the attachment order, the very basis of the prosecution case is rendered nugatory.

20. In view of the discussion made hereinabove as well as material adduced on record alongwith the challan filed under Section 173 Cr.P.C, this Court is persuaded to agree with learned counsel for the petitioner that no case muchless under Sections 411 and 120-B of IPC is made out against the petitioner and as such, no fruitful purpose would be served in continuation of trial against the petitioner under the aforesaid provisions of law, rather continuation of the same besides causing mental agony to the petitioner would amount to sheer abuse of process of law.

21. Consequently, in view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court (supra), FIR No. 09/2016, dated 03.04.2016, under Sections 411, 120-B of IPC, registered at police

Station, State CID Bharari, District Shimla, Himachal Pradesh is quashed qua the petitioner. As a sequel, the consequent proceedings i.e. Corruption Case No.11 of 2019, titled State of ***Himachal Pradesh vs. Vinay Sharma and others*** having CNR No. HPS1010033292019, pending in the Court of learned Special Judge, Sirmaur at Nahan, Himachal Pradesh, shall also stand quashed and set aside qua the petitioner-accused. Interim order, if any, is vacated. Pending applications, if any, also stand disposed of.

(Chirag Bhanu Singh)
Judge

November 25, 2026
(Anita)