IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CrMMO No. 742 of 2024
Reserved on: 20.4.2026
Date of decision: 27.4.2026

Subhash Chand Dhiman

.....Petitioner

Versus

State of Himachal Pradesh and Anr.

.....Respondents

Coram
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting?

For the Petitioner: Mr. Rajiv Sirkeck, Advocate.

For the Respondents: Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocates General and Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General, for respondent No.1.

Sandeep Sharma, J.

Through instant petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (in short "BNSS"), prayer has been made by the petitioner for quashing of FIR No.2 of 2017, dated 20.06.2017, under Sections 420 and 120-B of IPC and Section 13(1)(d)(II), 3(2) of the Prevention of Corruption Act, registered at police Station SV & ACB Shimla, District Shimla, Himachal Pradesh, as well as consequent proceedings pending adjudication in the competent Court of law.

2. Quintessential facts, relevant for adjudication of the case at hand, as emerge from the pleadings adduced on record by the respective parties are that in the year 2007, Department of Horticulture (Government of Himachal Pradesh), decided to purchase Anti Hail Gun System in District Shimla, Himachal Pradesh. Though Anti Hail Gun System was purchased from one US based Company for sum of Rs. 2.35 Crore, but afore Company further entered into an agreement with M/s Siri Global Aviation Consultant for installation of Anti Hail Gun System at the identified places in District Shimla, Himachal Pradesh. Pursuant to afore purchase, an agreement was signed on 03.04.2010 between petitioner herein and respondent No.2 (*Sh. T. Nishant Reddy, CEO of M/s Siri Global Aviation Consultants*). As per condition No.12 of afore agreement, 80% of the payment was to be released after supply, installation and successful commissioning of the system and satisfactory training to the staff and remaining 20% was to be released after the satisfactory acceptance. 80% payment was released in favour of the Company as per agreed terms and thereafter, Committee comprising of petitioner, Sh. Man Mohan Singh (Director, Meteorological Department Government of India), Dr. I.P. Sharma of UHF, Nauni and Dr. I.D. Gupta (Dy. Director Horticulture), inspected the spot on 13/14.8.2010 in the presence of respondent No.2 and observed that height of the tower on

which the Radar was fixed was required to be increased to 60 ft. Committee also pointed out that fencing work was required to be completed around the ground area of the Cannons and Radar and operational training of this system was to be imparted to the Departmental Officers and earthing of the system was also required to be completed. Though Committee after having visited the site opined that payment of the remaining work may not be disbursed till completion of the work as per the agreement, but allegedly respondent No.2 vide letter dated 18.04.2011 requested the Project Director (HTM) i.e. petitioner herein, to release the remaining 20% amount claiming that height of the tower, on which the radar was fixed, had been increased to 100 ft., the fencing work has been completed around and ground area of the Cannons and Radar, earthing of the radar system had been completed. Upon afore request of respondent No.2, petitioner released the balance payment of 20% on 20.04.2011. After commissioning of Anti Hail Gun System and release of payment, a complaint came to be received by the Vigilance Department that Anti Hail Gun System was purchased in violation of Government Procedure and Rules in the years 2007-2012, as a result thereof, huge loss has been caused to the public exchequer.

3. On the basis of aforesaid complaint, inquiry was constituted and Enquiry Officer i.e. Mr. Amar Singh, Deputy Superintendent of Police SV & ACB Shimla, in his report concluded that 20% of the payment was released by the petitioner in favour of the Company without verifying from the spot whether observations/defects pointed out by the Committee during its visit were rectified or not?. In addition to afore complaint as well as inquiry report, one complaint in the year, 2013 also came to be received by the Vigilance Department with regard to irregularities in purchase and installation of Anti Hail Gun System. Though Inquiry Officer categorically concluded that no irregularities have been found to be committed in purchase of Anti Hail Gun System, however, Government after having examined aforesaid report, ordered further inquiry qua certain points. In the aforesaid backdrop, FIR sought to be quashed in the instant proceedings, came to be lodged against the petitioner as well as respondent No.2.

4. After completion of investigation, police presented challan in the competent court of law against the petitioner as well as respondent No.2 for their having committed the offences punishable under Section 420, 120-B of IPC as well as Section 3(1)(d)(II), 3(2) of the Prevention of Corruption Act, but before same could be taken to its logical end,

respondent No.2 approached this Court by way of CrMMO No. 306 of 2021, titled Nishant Reddy v. State of Himachal Pradesh and Anr., filed under Section 482 of CrPC, for quashing of FIR as well as consequent proceedings, which prayer of him was allowed vide judgment dated 20.6.2024 (Annexure P-3) passed by this Court.

5. During proceedings of the case, Mr. Rajan Kahol, learned Additional Advocate General, fairly admitted that afore judgment passed by this Court has attained finality because no further proceedings have been filed in the superior court of law. In the afore background, petitioner herein, who is one of the accused in the FIR in question has approached this Court in the instant proceedings, for quashing of FIR as well as consequent proceedings.

6. Precisely, the grouse of the petitioner as has been highlighted in the petition and further canvassed by Mr. Rajiv Sirkeck, learned counsel for the petitioner, is that once FIR sought to be quashed has been already quashed against respondent No.2, prayer made by the petitioner, against whom, allegation is leveled that he in connivance with respondent No.2 caused loss to public exchequer by releasing remaining 20% amount without verifying on the spot whether observations/defects pointed out by the committee during its visit were rectified or not, also deserves to be

accepted. While referring to the FIR sought to be quashed learned counsel for the petitioner further submitted that no case much less under Section 420 and 120-B of IPC is made out against the petitioner. He further submitted that since at the time of commissioning of Anti Hail Gun System, agreement was arrived *inter-se* parties, whereby M/s Siri Global Aviation Consultant was made responsible for maintenance and installation for a period of two years after installation coupled with the fact that defects pointed by the committee were rectified, shortcomings, if any, noticed after expiry of period of two years could not be made ground for penalizing the petitioner, who after being satisfied that defects have been rectified, proceeded to release the balance payment of 20%. While referring to the report of the Committee comprising of the expert including petitioner, it came to be argued at the behest of petitioner that as per observations made by aforesaid Committee, only height of the tower was to be increased up to 60 ft., which was admittedly increased up to 100 feet and thereafter, Anti Hail Gun System set up by the Company concerned was found to have been working successfully. He further submitted that radars provided by the Company at the time of installing Anti Hail Gun System remained in operation for more than two years. He submitted that since radars allegedly stopped working after two years, no action otherwise could have

been taken against the Company concerned for the reason that it was responsible for maintenance and curing of the defects for a period of two years in terms of the agreement arrived *inter-se* parties. He further submitted that radars set up along with Anti Hail Guns System were destroyed on account of heavy snow fall in the year 2011-2012 and thereafter, nobody from the Department ever visited the spot till April, 2013. Mr. Sirkeck submitted that balance payment 20% was released by petitioner on the basis of written request made by the respondent No.2 on being satisfied that defects pointed out by the Committee stand rectified. While referring to provisions contained under Sections 420 and 120-B of IPC, learned counsel for the petitioner argued that no case much less under afore provisions of law is made out against the petitioner, especially when there is nothing on record that the petitioner herein ever induced or cheated respondent-Department to deliver any property to him or to make, or alter or destroy the whole or any part of valuable security, rather he after having received request from respondent No.2 released remaining 20% to respondent No.2. He further submitted that there is nothing on record to suggest that petitioner had dishonest intention, if any, from very beginning, which is *sine qua non* to invoke Section 420 IPC, rather he after having entered into the agreement with the Company kept on monitoring the

installation of Anti Hail Gun System and 80% of the total amount was released as per the directions issued by the committee which though was fully satisfied with the work save and except 3-4 shortcomings, which were ultimately rectified by the Company, who had entered into agreement for providing maintenance as per agreed terms for more than two years. He further submitted that there is nothing on record to suggest criminal conspiracy inter-se petitioner and respondent No.2. He submitted that admittedly, amount came to be released in favour of Company on account of its having provided three Anti Hail Gun System on the specified spots and as such, no illegal act, if any, can be said to have been committed by the petitioner in discharge of public function, rather he after being satisfied that defects have been cured, rightly proceeded to release 20% of the total amount. He submitted that since this Court in CrMMO No. 306 of 2021, after having examined material adduced on record by the investigating agency along with Challan under Sections 420 and 120 of IPC has arrived at a conclusion that there is material adduced on record suggestive of the fact that petitioner before ordering release of remaining 20% had actually visited the spot, no proceedings much less under Sections 420 and 120 of IPC, are sustainable, especially when FIR against respondent No.2-CEO of the Company has been quashed, against whom, it was alleged that he in

connivance with the petitioner caused loss to the public exchequer. Lastly, Mr. Sirkeck, submitted that otherwise also, bare perusal of evidence collected on record by the prosecution to connect petitioner with offence alleged to have been committed under Section 420 of IPC, nowhere suggests that case filed by the prosecution would succeed, rather in all eventualities, it is bound to fail. If it is so, very continuation of proceedings initiated against the petitioner deserves to be quash and set aside.

7. To the contrary, Mr. Rajan Kahol, learned Additional Advocate General, while refuting the prayer made by the petitioner, vehemently argued that there is overwhelming evidence adduced on record by the prosecution suggestive of the fact that petitioner being Project Director gave undue favour to respondent No.2 by awarding work of installation of Anti Hail Gun System and thereafter, remaining amount of 20% was also disbursed to the Company without its having cured the defects as were pointed out by the Committee. He submitted that since Committee had specifically observed after release of 80% of the payment that remaining 20% shall not be released until defects pointed out by it are cured, there was no occasion, if any, for the petitioner to release the same without verification on the spot. He submitted that it has come in the investigation, earthing of Radar System was not found to have been done properly as per

standard practice, no lightening arresters were provided to protect the Radar System from lightening, as a result thereof, Radars set up at the time of installation of Anti Hail Guns System, were damaged within a short span of two years. He further submitted that earthing and fencing of all the three cannons were also not done. Learned Additional Advocate General submitted that since petitioner abused his official position by giving undue advantage to the Company in connivance with respondent No.2 i.e. CEO of the Company and released pending 20% merely on the version of the Company qua removal of shortcomings, without physically verifying himself or getting verified through the Committee so constituted for the said purpose, no illegality can be said to have been committed by the respondent-State while registering the FIR sought to be quashed in the instant proceedings. While fairly admitting factum with regard to quashing of FIR qua respondent No.2, learned Additional Advocate General also admitted that in terms of the agreement, Anti Hail Guns System along with Radars were to be maintained by Company for two years from the date of effective installation.

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

3. Before ascertaining the genuineness and correctness of the submissions and counter submissions having been made by the learned counsel for the parties vis-à-vis prayer made in the instant petition, this Court deems it necessary to discuss/elaborate the scope and competence of this Court to quash the criminal proceedings while exercising power under Section 482 of Cr.PC (now Section 528 of BNSS).

4. A three-Judge Bench of the Hon'ble Apex Court in case titled **State of Karnataka vs. 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.

5. Subsequently, in case titled **State of Haryana and others vs. 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.PC 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, 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 High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose i.e. court proceedings ought not to be permitted to degenerate into a weapon of harassment or persecution.

6. 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.PC., 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, 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 leveled 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 judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

7. 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.PC can proceed to quash the proceedings.

8. Hon'ble Apex Court in case tilted ***Anand Kumar Mohatta and Anr. v. State (Government of NCT of Delhi) Departmetn 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.PC

(relevant paras 16 and 17). *Also see* ***Pramod Suryabhan Pawar v. The State of Maharashtra and Anr, (2019) 9 SCC 608,*** wherein Hon'ble Apex Court has elaborated the scope of exercise of power under Section 482 Cr.PC (now Section 528 of BNSS).

9. Now in light of aforesaid law laid down by Hon'ble Apex Court, this Court would make an endeavour to examine and consider the prayer made in the instant petition, vis-a-vis factual matrix of the case.

10. Admittedly, in the case at hand, case under Sections 420 and 120-B of IPC came to be registered against the petitioner and respondent No.2-CEO of the Company, on the precise allegation that they in connivance with each other caused financial loss to the State exchequer. Though there is no dispute with regard to release of 80% amount qua setting up Anti Hail Gun System, but since Committee after having visited the sites had observed in report that remaining 20% of the total amount shall not be released till the time defects are cured, but allegedly, petitioner being Project Director, on the request of respondent No.2 proceeded to release the balance amount without verifying actual position on the spot.

11. In nutshell, case of the prosecution is that vide letter dated 18.4.2011, respondent No.2 requested the petitioner to release the remaining 20% amount by falsely claiming that the height of the tower, on

which the radar was fixed, had been increased to 100 feet, but actually on the ground such height was never increased. As per the prosecution, though no fencing work was completed around the ground area, but yet petitioner herein released the payment on 20.04.2011 without physically verifying himself or getting verified through Committee appointed especially for the said purpose.

12. Careful perusal of record reveals that though Anti Hail Gun System set up in the year 2010 was found to be working properly till 2013, but suddenly after change of guard, a complaint came to be made that Department without following due procedure, purchased Anti Hail Gun System that too on the basis of single tender. However, Inquiry Officer appointed by the Department to look into the aforesaid aspect of the matter, reported that no irregularities, if any, were ever committed during the purchase of Anti Hail Guns System, but yet another inquiry came to be instituted under chairmanship of Deputy Superintendent of Police Amar Singh in complaint No.45 of 2013, wherein he alleged that balance 20% was released in hot haste manner with a view to provide undue advantage and benefit to the Company concerned. Though documents adduced on record, especially report of the Committee along with challan filed under Section 173 CrPC suggest that certain remedial steps were required to be

taken by the Company concerned to protect the Anti Hail Control System and only thereafter balance 20% could be released, however, allegedly in the case at hand, petitioner without verifying rectification of shortcomings pointed out by the Committee, released remaining 20% amount on the request made by the respondent No.2.

13. Since it is not in dispute that in terms of agreement executed inter-se Company, which had setup Anti Hail Gun System and Department, Company concerned kept on maintaining the same for a period of two years, it is not understood how and on what basis case under Sections 420 and 120-B of IPC, could be registered against the petitioner, which had executed agreement with the respondent No.2. In case bearing CrMMO No. 306 of 2021 filed by respondent No.2, this Court while dealing with allegations leveled against the company concerned, arrived at a conclusion that there is no material to indicate dishonest intention, if any, of the Company concerned not to do the act, which actually had agreed to be done on the spot in terms of the agreement executed *inter se* the Department and the Company concerned, rather Department ought to have initiated appropriate proceedings in appropriate Court of law qua the Company concerned for its having violated terms and conditions of the agreement. In the afore proceedings, this Court arrived at a conclusion

that there is nothing to suggest that respondent No.2 being CEO of the Company, misrepresented or dishonestly induced petitioner to release 20% balance amount qua the work, which allegedly Company concerned had not done on the spot. In afore proceedings, this Court found from the record that radars though were installed, but same were damaged due to heavy snow fall. Similarly, there is nothing on record that petitioner herein never visited the spot to ascertain the factum of rectification of the shortcomings pointed out by the Committee, rather Company at the time of making prayer for release of balance amount, made available ample material suggestive of the fact that defects pointed by the committee stand rectiied. It is only pursuant to written request made by respondent No.2, petitioner released the balance amount.

14. Interestingly, in the case at hand, charge sheet filed under Section 173 Cr.P.C, itself suggests that during inquiry Dr. Narender Pal Singh, Senior Analytical Officer, Directorate of Horticulture, made a statement that he visited the radar site in the month of March, 2013 alongwith Horticulture Extension Officer(HEO), Deori Khaneti, Sh. Brij Bhushan and HDO Kothkhai Sh. Jagdish Sharma and found the radar system in worn out condition and immediately informed the Dy. Director Horticulture, Shimla telephonically from the spot and also in writing

lateron. It has been stated in the report filed under Section 173 Cr.P.C, that during the course of enquiry, Sh. Brij Bhushan, Horticulture Extension Officer, Deori Khaneti, Tehsil Kotkhai, District Shimla, who was also associated with the enquiry on 26.09.2016, deposed that as per the direction of Deputy Director, Horticulture, Shimla vide office letter dated 15.12.2012, Sh. M.M.Sharma, the then, Subject Matter Specialist (HTM) had handed over the physical charge of Radar System installed at Tumeru Peak Khadapather to him and at that time, Sh. M.M.Sharma, Sh.Govind Singh Jogta, the then, DHO Shimla were present on the spot and radar was physically in good condition, but he had no knowledge whether the radar was functional or otherwise

15. Interestingly, final report under Section 173 Cr.P.C. further reveals that aforesaid person had prepared the cross entry of the radar system with the inventory, which was handed over to him at the time of giving charge of the system and same was submitted/handed over to Deputy Director Horticulture, Shimla. He further submitted before the inquiry officer that at that time Department had not appointed any person for the purpose of watch and ward of the radar system, which otherwise as per agreed terms was required to be provided by the Department. He further deposed before the inquiry officer that he had made correspondence

with the Deputy Director, Horticulture (HTM), Shimla for appointment of the person for watch and ward of the Radar system through Plant Protection Officer, Kotkhai. Though, petitioner had hired one Sh. Neeraj Kumar, R/o Deorighat for watch and ward of the Radar system on contractual basis as per the recommendation of the Committee constituted for the purpose, but during 1st week of April, Sh. Neeraj Kumar informed him verbally that Radar was in worn out and broken condition. It is quite apparent from the aforesaid statement by the person concerned that on the spot radar system was installed along with the Anti Hail Gun System by the Company concerned and it was very much operational till 15.12.2012 and thereafter same was damaged on account of careless attitude of the Department concerned.

16. At this stage, it would be apt to take note of Section 420 and 120- B of IPC herein below:-

> **"12-B. Punishment of criminal conspiracy.**--(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.
> (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid

shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

***420 Cheating and dishonestly inducing delivery of property**:- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable fine."*

17. Bare perusal of Section 120-B of IPC, reveals that whoever is a party to a criminal conspiracy to commit an offence punishable with death or rigorous imprisonment for a term of two years or upwards, shall be punished in the same manner as if he had abetted such offence, but to invoke aforesaid provision of law firstly, it is required to be established that two or more persons agreed to do or not to be done any illegal act. However, in the instant case, there is nothing on record to suggest that petitioner and respondent No.2 agreed to do some illegal act, rather respondent No.2 being CEO after having rectified the shortcomings pointed by the Committee made a written request to the officer concerned to release balance payment. Though, attempt has been made by the prosecution to carve out a case that petitioner without verifying the actual position on the spot, proceeded to release the remaining 20% amount, but such inaction, if

any, of him may not be sufficient to initiate proceedings under Sections 420 and 120-B of IPC.

18. To invoke Section 420 of IPC, it is incumbent upon the prosecution to prove that the person charged with aforesaid provision of law cheated and thereafter, dishonestly induced the person deceived to deliver any property to any person. It is none of the case of the prosecution that respondent No.2 cheated and thereafter, dishonestly induced petitioner to release the balance amount, rather respondent No.2 i.e. CEO of the Company by way of written communication informed the officer concerned that Company has rectified the shortcomings as pointed out by the Committee and as such, balance payment be released. Once this Court having perused record has already arrived at a conclusion in case filed by respondent No.2 (CrMMO No. 306 of 2021) that before demanding release of balance amount, Company had rectified the shortcomings as were pointed out by the Committee, this court is not persuaded to agree with learned Additional Advocate General that petitioner without satisfying himself with regard to rectification of shortcomings pointed out by the Company proceeded to release the amount. Unless, there is material adduced on record, suggestive of the fact that petitioner, before ordering release, had actually not visited the spot, no proceedings, much less

proceedings under Section 420 and 120B IPC are required to be initiated against the petitioner, rather, action, if any, can be taken against such person, under relevant rules, for dereliction in performance of duties.

19. Leaving everything aside, this Court finds from the record that Department concerned on account of non rectification of the shortcomings pointed out by the Committee has already forfeited the Bank Performance Guarantee amounting to Rs. 28, 91,000/-.

20. In view of the discussion made hereinabove as well as material adduced on record along with the challan filed under Section 173 Cr.P.C, this Court is persuaded to agree with learned counsel for the petitioner that no case much less under Sections 420 and 120-B of IPC is made out against him and as such, no fruitful purpose would be served in continuation of trial against him under the aforesaid provisions of law, which besides causing mental agony to the petitioner would also amount to sheer abuse of process of law.

21. Consequently, in view of the detailed discussion made herein above, present petition is allowed and FIR No.2 of 2017, dated 20.06.2017, under Sections 420 and 120-B of IPC and Section 13(1)(d)(II), 3(2) of the Prevention of Corruption Act, registered at police Station SV & ACB Shimla, District Shimla, H.P., as well as consequent proceedings, are quashed and

set-aside qua the petitioner-accused and he is acquitted of the offences alleged in the FIR. Interim order, if any, is vacated. Pending applications, if any, also stand disposed of

April 27, 2026 **(Sandeep Sharma),**
(manjit) **Judge**