IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.MMO No.1240 of 2023
Reserved on 13.10.2026
Decided on 19.11.2026
Uploaded on : 19.11.2026

Suresh Kumar Bhanu ...Petitioner

Versus

State of H.P. & Anr. .....Respondents

Coram:

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

Whether approved for reporting? [1]

For the Petitioners : Mr. Arvind Sharma, Senior Advocate, with Ms. Kiran Sharma, Advocate.

For the Respondents : Mr. Lokender Kutlehria, Additional Advocate General, for respondent No.1.

Mr. Abhishek Nagta, Advocate, vice Mr. Nipun Thakur, Advocate, for respondents No.2.

Chirag Bhanu Singh, Judge

The petitioner-Suresh Kumar Bhanu seeks to invoke the inherent jurisdiction of this Court, under Section 482 of the Code of Criminal Procedure, (hereinafter referred to as the 'Cr.P.C'), for quashing FIR No.269/2019, dated 06.08.2019 registered under Sections 420 & 409 of the Indian Penal Code (hereinafter referred to as the IPC), at Police Station Sadar,

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

District Una, H.P., along with all consequential proceedings arising thereto, pending before the learned Additional Chief Judicial Magistrate Court No.1, Una, H.P.

2. The genesis giving rise to the FIR may be succinctly put thus. The present petitioner was posted as a Branch Manager at Canara Bank, Una, w.e.f. June, 2012 to 2014. On 06.08.2019, the respondent No.2/complainant, Kuldeep Sharma, had preferred a written complainant before the Incharge Police Station Sadar Una, that one Mohammad Shahid Hussain and the Manager of the Canara Bank, Una, had committed a fraud and misused the government funds. It was asserted by the complainant that accused Mohammad Shahid Hussain and the Bank Manager of Canara Bank Una, S.K. Bhanu (the petitioner) in connivance with each other had committed a fraud and has used the documents of his residential house for securing a loan which was never issued by the Bank.

3. It is further asserted by the complainant that accused Mohammad Shahid Hussain had got introduced to one Rakesh Kumar Paul and the petitioner-Suresh Kumar Bhanu in December, 2013. They had sought one guarantee to seek a

NSC account for 1.00 Crore rupees. He handed over the documents of his residential house to be used as security. When no loan for the aforesaid amount was issued by the Bank he had sought the original documents which were to be used as security but they were never returned to him. However, later on he had come to know that co-accused Mohammad Shahid Hussain had taken a bank loan from the Canara Bank in the year 2013 for an amount of Rs.50,00,000/- to run his unit by the name of M/s Paras Home Appliances under the CGTMSE Scheme in which no collateral guarantee is required to be given. After he had given his documents pertaining to his residential house, the petitioner/accused-Suresh Kumar Bhanu had offered a loan of Rs.50,00,000/- to Rashida Khan wife of Mohammad Shahid Hussain for setting up a false and fictitious unit, which never came into operation. It was further asserted by the complainant that he had subsequently come to know that the bank had enhanced a CC limit of M/s Paras Home Appliances from Rs.30,00,000/- to Rs.60,00,000/- and also extended a term loan of Rs.15,00,000/- on the date of his signing the documents. The bank is thus, using his documents for the old loans, as collateral security.

4. While filing the present petition, it is the contention of the petitioner that a false and fictitious complaint had been preferred by the complainant i.e. respondent No.2 to counter the legal action taken by the Canara Bank against its secured assets, initiated under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'Act') and seeking accounts of M/s Paras Home Appliances a partnership concerned in which the son of the complainant/respondent was a partner which had also been classified as NPA on 15.06.2015. The bank had initiated steps to recover the money under Sections 13(2) and 13(4) of the Act.

5. The co-accused Mohammad Shahid Hussain and the son of the complainant, namely Piyush Sharma, who was a partner in M/s Paras Home Appliances had taken a term loan of Rs.13,69,000/- and working capital of Rs.30,00,000/- from the Canara Bank on 30.07.2013 under the CGTMSE coverage and thereafter on 10.10.2013 M/s Paras Home Appliances had requested and applied for an adhoc limit of Rs.35,00,000/- which was released through account No.2620662610000354, the working capital limit of Paras Home Appliances loan was

also enhanced from Rs.30,00,000/- to Rs.65,00,000/-. For securing the public money so offered to M/s Paras Home Appliances as loan, collateral security and simple mortgage was obtained by the bank from the complainant, who was the father of one of the partners of M/s Paras Home Appliances.

6. The complainant/respondent No.2 had lodged a baseless, false and absurd complaint against the petitioner after he himself had signed the loan agreement (Annexure P-3) and the mortgage deed (Annexure P-4), on his own. The documents of the property had been tendered as collateral security against the financial assistance offered to M/s Paras Home Appliances to the tune of Rs.65,00,000/- along with a term loan Rs.13,69,000/-, total Rs.78,69,000/-, of which his son also happened to be a partner.

7. The account of M/s Paras Home Appliances became a non performing assets and as such notice under Section 13(2) of the Act, was issued on 11.09.2015 notifying them that the liability had swelled to Rs.79,51,131.25/- as on 11.09.2015.

8. In pursuance thereto, the bank had also approached the District Magistrate under Section 14(b) of SARFEASI Act for

providing assistance to take over the possession of the secured assets. The District Magistrate, Una, ordered Tehsildar Una, to take over the possession of the secured assets and hand them over to the bank. The complainant had also thereafter filed a civil suit titled as Kuldeep Sharma versus Canara Bank in the Court of learned Civil Judge, Una (Annexure P-5). Simultaneously, the complainant/respondent had also approached the Debt Recovery Tribunal Chandigarh by filing a petition vide (Annexure P-6).

9. It is thus evidently clear that the complainant having become the guarantor for the loan advanced to M/s Paras Home Appliances, in which his own son Piyush Sharma was a partner, is trying to evade payment of the loan amount. He had thus filed false litigations including the present FIR, to escape his liability.

10. The FIR is thus, stated to be totally baseless and false, the same having been filed mainly to evade his liability. The complainant had managed the investigation of the FIR and the investigating agency had not considered the relevant documents as notedly no fresh loan had been sanctioned against the documents submitted by the complainant. It is

only that the working capital of M/s Paras Home Appliances had been increased to Rs.78,69,000/- and against the said enhanced loan amount the complainant had executed documents. The FIR had also been lodged only after the loan account of the defaulting borrower was classified NPA and even recovery proceedings had been initiated against its secured assets. The registration of the FIR thus is nothing but a gross abuse of the process of law. A wrong final report had been prepared by the investigating agency without taking into consideration the relevant documents issued by the bank. Even otherwise, under Section 32 of the Act, no prosecution could have been lodged against any secured creditor or any of its officers or Managers exercising any of the rights of the secured borrower for anything done or omitted to be done in good faith under this Act.

11. Even otherwise, the mortgage deed dated 09.12.2013 had been executed by the complainant/respondent No.2 of his own. The petitioner had no role whatsoever in the execution of the said mortgage deed. There is nothing on record to show that the mortgage deed had been used in some old or different loan. The petitioner being an officials of the bank had acted in

good faith and as per the banking procedure and the guidelines laid down by the Reserve Bank of India. The present criminal proceedings thus were nothing but an abuse of process of law. The petitioner thus prayed for the quashing of the FIR.

12. While contesting the petition, the respondent No.1 has filed reply. No reply had been filed by respondent No.2. It has been averred by the respondent No.2 that he shall argue the matter on the basis of the material already available on record.

13. The respondent No.1, while contesting the proceedings has averred that the complainant had alleged fraud in the execution of the surety bond which had been submitted to sanction a loan amounting to Rs.1,00,00,000/- (One Crore) to M/s Paras Home Appliances. The investigating agency had investigated the matter and on finding sufficient material on record had filed a final report under Section 173 Cr.P.C., before the competent Court for a judicial verdict. Though the contents of the petition have been denied on merits too, but it has been specifically averred by respondent No.1 that the petitioner had obtained a surety regarding the loan of Rs.1,00,00,000/- which was applied by M/s Paras Home

Appliances and respondent No.2 had submitted documents of his property in response of surety (guarantor) for the loan amount of Rs.1,00,00,000/- but the petitioner had mortgaged the property of respondent No.2 in lieu of surety of Rs.1,00,00,000/-. The said mortgage was entered in the revenue papers without sanctioning and remitting of amount of Rs.1,00,00,000/-. It was further reiterated that the petitioner had used the documents/papers of the house and property without sanctioning and delivery of the loan amount of Rs.1,00,00,000/- and also entered the said in the revenue papers, thus committing a fraud against respondent No.2.

14. I have heard the learned counsel appearing for the parties and have gone through the records.

15. The reply filed by respondent No.1 in itself shows that apparently no case is made out against the petitioner. The respondent No.1 has himself admitted in uncertain terms that the respondent No.2/complainant had submitted the documents as surety to sanction the loan amount of Rs.1,00,00,000/- to M/s Paras Home Appliances and the petitioner had mortgaged the property of respondent No.2 in

lieu of surety of Rs.1,00,00,000/- i.e. the loan applied by M/s Paras Home Appliances.

16. Admittedly, the son of the petitioner Piyush Sharma was a partner in M/s Paras Home Appliances along with the other co-accused Mohammad Shahid Hussain.

17. That also happens to be the case of the petitioner too. As per record too, the petitioner M/s Paras Home Appliances had initially taken a loan of Rs.13,69,000/- along with a working capital of Rs.30,00,000/- from Canara Bank on 03.04.2013, under the CGTMSE coverage. However, subsequently, on 10.10.2013, the M/s Paras Home Appliances had requested and applied for an enhanced limit of Rs.35,00,000/- and the working capital had also been enhanced to Rs.65,00,000/- and as such, total financial assistance of Rs.78,69,000/- had been offered to M/s Paras Home Appliances. To secure the said loan collateral security in the shape of a mortgage had been obtained by the bank which had been offered by the respondent/complainant, who happened to be the father of one of the partner of M/s Paras Home Appliances i.e. Piyush Sharma.

18. The petitioner has placed on record the letter seeking the enhancement of the credit facilities. The letter seeking enhancement of the credit facilities sought by M/s Paras Home Appliances, which was preferred by them on 16.12.2013 has been annexed along with a guarantee agreement of the even date (Page No.84 of the petition).

19. The complainant himself had also handed over a simple mortgage deed (for running limits and term loan) for an mortgage amount of Rs.1,00,00,000/- on 09.12.2013 and that too specifically in respect of M/s Paras Home Appliances, placed on record as Annexure P-4.

20. It had been urged by the learned counsel for the respondent/complainant that the assets itself was the guarantee as per the CGTMSE Scheme and as such there was no occasion for him to have mortgaged his property. The said arguments also cannot be countenanced because admittedly initially the loan had been procured under the CGTMSE coverage but subsequently, on 16.12.2013 M/s Paras Home Appliances had themselves sought enhancement of the credit facilities and in this regard a guarantee had to be provided. Even otherwise, while filing the guarantee agreement and

submitting the mortgage deed dated 09.12.2013 would clearly go to show that the guarantee had been issued for the enhanced limits sought by M/s Paras Home Appliances.

21. The allegations of the complainant/respondent No.2 that a loan of Rs.1,00,00,000/- against the petitioner property had been mortgaged was not sanctioned also cannot be countenanced in any manner. The letter in respect of enhancing the credit facilities preferred by M/s Paras Home Appliance, in which one guarantee agreement has been annexed by none else but the respondent/complainant shows that the credit limits had been got enhanced and so is the recital of the mortgage deed. The mortgage deed in fact, clearly and candidly reflects that M/s Paras Home Appliances has approached the mortgagee for financial assistance to the extent of Rs.1,00,00,000/- in the following manner Rs.14,00,000/- only, Rs.36,00,000/- working capital and Rs.50,00,000/- export bill limit, though the bank had only offered financial assistance amounting to Rs.78,69,000/- only.

22. The credit limit facility further specifically states that the total liability ultimately enforceable against the mortgagor under this agreement shall not exceed Rs.1,00,00,000/-, thus

it cannot be said that the mortgage deed executed by the complainant had been used as collateral security in some old loan in respect of M/s Paras Home Appliances. The complainant had executed the documents knowing fully well the import of what he was doing. It is also not the case that he was doing so for some unknown person. In fact, his son Piyush Sharma was a partner with the other co-accused Mohammad Shahid Hussain. The collateral proceedings initiated by the complainant by way of a Civil Suit and the proceedings before the DRT also clearly belie the case propounded by the complainant. In fact, in the reply, the respondent/State itself have stated that the documents had been submitted in response to a surety (guarantor) for the loan amount of Rs.1,00,00,000/- but the said mortgage was also entered in the revenue papers but without sanctioning and delivery of the loan amount that the outer limit of the loan was Rs.1,00,00,000/-. M/s Paras Home Appliances however, had only exercised the limit till Rs.78,69,000/-. The security offered by the complainant thus was limited only for that amount only. M/s Paras Home Appliances could have utilized the same up to an amount of Rs.1,00,00,000/-.

23. Even otherwise there is nothing on record to remotely show as to how the petitioner had been unduly benefited. He was neither a beneficiary of the debt nor there are any allegations that he had done so for any extraneous reason. The mortgage property was a secured assets of the bank and the bank had every right to proceed against its secured assets.

24. As far as the petitioner is concerned, undoubtedly as per the provisions of Section 32 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the petitioner was protected from any prosecution. Section 32 of the Act reads thus:-

> ***"Section 32:-***
>
> ***Protection of action taken in good faith***
>
> *No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Act."*

25. In this behalf a support can ably be drawn from the judgment of the Hon'ble Supreme Court in case titled as **Priyanka Srivastava and another vs. State of Uttar Pradesh (2015) 6 SCC 287.**

26. Seen from any angle it is thus clear that in fact no cognizable offence is made out at least against the petitioner. The bare reading of the FIR and the material placed on record clearly shows that no cognizable offence whatsoever, is made out against the petitioner/accused.

27. Not only this the allegations made in the FIR and even the complaint are so inherently improbable and keeping in view the discussion made hereinabove the allegations made in the complaint even if they are taken at its face value and accepted in their entirety do not indeed prima-facie make out any offence against the petitioner. The complainant himself having mortgaged his property as collateral security to get the financial limits of M/s Paras Home Appliances enhanced to One Crore, as his own son was one of the partners of the said partnership firm. The present case thus, is fully covered by the mandate of law laid in **State of Haryana and another versus Bhajan Lal and others (1992) SCC 335** and reiterated in case titled as **Pramod Suryabhan Pawar versus State of Maharashtra and another (2019) 9 Supreme Court Cases 608.**

28. For all the reasons detailed herein above, the present petition is allowed. As a sequel FIR No.269 of 2019, dated 06.08.02019, registered under Sections 420 & 409 of IPC, at Police Station Sadar, District Una, H.P., and all the consequent proceedings arising out of the said FIR, pending before the learned Additional Chief Judicial Magistrate, Court No.1, Una, H.P., are quashed and set-aside. Ordered accordingly.

29. The petition is disposed of in the aforesaid terms, pending application(s), if any also stands disposed of.

(Chirag Bhanu Singh)
Judge

November 19, 2026
(subhash sharma)