IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CrMMO No. 1077 of 2026
Reserved on: 08.10.2026
Date of Decision: 27.10.2026.

Jaan Dei & another **....Petitioners**

Versus

Sub Divisional Magistrate Pangi & others **....Respondents**

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

For the petitioners	:	**Mr Vijay Chaudhary, Advocate.**
For the respondents	:	**Mr Ajit Sharma, Deputy Advocate General, for respondents No.2 to 4/State.**

Rakesh Kainthla, Judge

Learned Sub Divisional Magistrate (SDM), Pangi, passed an order on 19.06.2025 under Section 133 of the Code of Criminal Procedure (CrPC) directing the petitioner Jaan Dei to allow the Rajesh Kumar to go through the passage blocked by her by constructing a gate at Khasra No. 161 Mohal Karhoti,

[1] Whether reporters of the local papers may be allowed to see the judgment? Yes

Pargana Killar Tehsil Pangi, District Chamba, H.P., which was causing inconvenience to Rajesh Kumar and the general public. SHO was directed to remove the illegal construction if the petitioner Jaan Dei failed to comply with the order. The petitioner did not assail the order within the statutory period by filing a revision and instead preferred the present petition under Section 528 Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) for quashing the preliminary order dated 30.08.2025 and final order dated 04.12.2025 passed by learned SDM, Pangi, District Chamba under Section 133 of the CrPC.

2. The jurisdiction vested with the Court under Section 528 of BNSS is extraordinary and is not to be exercised when an alternative and efficacious remedy is available to the petitioner.

3. It was held in ***Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551: 1978 SCC (Cri) 10*** that inherent jurisdiction should not be exercised when a specific remedy exists. It was observed:

> At the outset, the following principles may be noticed in relation to the exercise of the inherent power of the High Court, which have been followed ordinarily and generally, almost invariably, barring a few exceptions:

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> "(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;
>
> (2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;
>
> (3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code."

4. It was laid down by the Full Bench of Delhi High Court in ***Gopal Dass vs State, AIR 1978 Del 138,*** that the jurisdiction under Section 482 of CrPC is vested in the Court to make such order as may be necessary to give effect to any order under the Code, prevent abuse of the process of any Court or otherwise to secure the ends of justice. This jurisdiction cannot be exercised when a specific remedy is available under the other provisions of the Code. It was observed: -

> "**8.** In order to determine the question under consideration as to what is the scope of the inherent powers of the High Court becomes relevant. The inherent powers of the High Court inhere in it because of its being at the apex of the judicial set-up in a State. The inherent powers of the High Court, preserved by section 482 of the Code, are to be exercised in making orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Section 482 envisages that nothing in the Code shall be deemed to limit or affect the inherent powers of the High Court exercised by it with the object of achieving the above-said three results. It is for

> this reason that section 482 does not prescribe the contours of the inherent powers of the High Court, which are wide enough to be exercised in suitable cases to afford relief to an aggrieved party. While exercising inherent powers, it has to be borne in mind that this power cannot be exercised in regard to matters specifically covered by the other provisions of the Code. (See ***R.P. Kapur v. State of Punjab, AIR 1960 S.C. 866) (1)***. This principle of law had been reiterated succinctly by the Supreme Court recently in ***Palanippa Gounder v. The State of Tamil Nadu, (1977) 2 SCC 634: AIR 1977 SC 1323 (2);*** therein, examining the scope of section 482, it was observed that a provision which saves the inherent powers of a Court cannot override any express provision in the statute which saves that power. *Putting it in another form, the Court observed that if there is an express provision in a statute governing a particular subject, there is no scope for invoking or exercising the inherent powers of the Court because the Court ought to apply the provisions of the statute which are made advisedly to govern the particular subject matter.*" (Emphasis supplied)

5. It was held in ***Arun Shankar Shukla v. State of U.P., (1999) 6 SCC 146: 1999 SCC (Cri) 1076: 1999 SCC OnLine SC 647*** that the jurisdiction under section 482 of Cr.P.C. is extraordinary and should not be exercised when a specific remedy has been provided under the Code. It was observed:

> "**2.** It appears that, unfortunately, the High Court, by exercising its inherent jurisdiction under Section 482 of the Criminal Procedure Code (for short "the Code"), has prevented the flow of justice on the alleged contention of the convicted accused that it was polluted by the so-called misconduct of the judicial officer. It is true that under Section 482 of the Code, the High Court has

inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any court or otherwise to secure the ends of justice. *But the expressions "abuse of the process of law" or "to secure the ends of justice" do not confer unlimited jurisdiction on the High Court, and the alleged abuse of the process of law or the ends of justice could only be secured in accordance with law, including procedural law and not otherwise. Further, inherent powers are in the nature of extraordinary powers to be used sparingly for achieving the object mentioned in Section 482 of the Code in cases where there is no express provision empowering the High Court to achieve the said object. It is well-nigh settled that inherent power is not to be invoked in respect of any matter covered by specific provisions of the Code or if its exercise would infringe any specific provision of the Code.* In the present case, the High Court overlooked the procedural law which empowered the convicted accused to prefer a statutory appeal against the conviction of the offence. The High Court has intervened at an uncalled-for stage and soft-pedalled the course of justice at a very crucial stage of the trial.

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9. In our view, the order passed by the High Court entertaining the petition of the convicted accused under Section 482 of the Code is, on the face of it, illegal, erroneous, and, to say the least, unfortunate. It was known to the High Court that the trial court passed proceedings to the effect that final judgment and order convicting the accused were pronounced by the trial court. It was also recorded by the trial court that, as the accused were absent, the Court had issued non-bailable warrants. In such a situation, instead of directing the accused to remain present before the Court for resorting to the steps contemplated by the law for passing the sentence, the High Court has stayed further proceedings, including the operation of the non-bailable warrants issued by the trial court. *It is disquieting that the High Court*

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> *has overlooked the important legal aspect that the accused has a right of appeal against the order of conviction purported to have been passed by the trial court. In such circumstances, the High Court ought not to have entertained a petition under Section 482 of the Code and stonewalled the very efficacious alternative remedy of appeal as provided in the Code.* Merely because the accused made certain allegations against the trial judge, the substantive law cannot be bypassed.

6. It was held by the Hon'ble Supreme Court in ***Hamida v. Rashid*, *(2008) 1 SCC 474*,** that the inherent jurisdiction under Section 482 of Cr.P.C. is to be exercised sparingly and should not be exercised when an alternative remedy is available. It was observed:

> "**7.** It is a well-established principle that inherent power conferred on the High Courts under Section 482 CrPC has to be exercised sparingly with circumspection and in rare cases, and that too to correct patent illegalities or when some miscarriage of justice is done. The content and scope of power under Section 482 CrPC were examined in considerable detail in ***Madhu Limaye v. State of Maharashtra [(1977) 4 SCC 551: 1978 SCC (Cri) 10: AIR 1978 SC 47],*** and it was held as under : (SCC p. 555, para 8)
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> The following principles may be stated in relation to the exercise of the inherent power of the High Court:
>
> (*1*) that the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;
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> (2) that it should be exercised very sparingly to prevent abuse of the process of any court or otherwise to secure the ends of justice;

(3) that it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

8. In ***State v. Navjot Sandhu [(2003) 6 SCC 641: 2003 SCC (Cri) 1545],*** after a review of a large number of earlier decisions, it was held as under : (SCC p. 657, para 29)

> "29. ... The inherent power is to be used only in cases where there is an abuse of the process of the court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly, as cases that require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out hereinabove fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment."

9. In ***Arun Shankar Shukla v. State of U.P. [(1999) 6 SCC 146: 1999 SCC (Cri) 1076],*** the High Court had entertained a petition under Section 482 CrPC after an order of conviction had been passed by the Sessions Judge and before the sentence had been awarded and further proceedings in the case had been stayed. In appeal, this Court set aside the order of the High Court after reiterating the principle that it is well settled that inherent power is not to be invoked in respect of any matter covered by specific provisions of the Code or if its exercise would infringe any specific provision of the Code. It was further observed that the High Court overlooked

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the procedural law which empowered the convicted accused to prefer a statutory appeal against conviction of the offence and intervened at an uncalled-for stage and soft-pedalled the course of justice at a very crucial stage of the trial. The order of the High Court was accordingly set aside on the ground that a petition under Section 482 CrPC could not have been entertained as the accused had an alternative remedy of an appeal as provided in the Code. *It is not necessary to burden this judgment with other decisions of this Court, as the consistent view throughout has been that a petition under Section 482 CrPC cannot be entertained if there is any other specific provision in the Code of Criminal Procedure for redress of the grievance of the aggrieved party.*

10. In the case in hand, the respondents-accused could apply for bail afresh after the offence had been converted into one under Section 304 IPC. They deliberately did not do so and filed a petition under Section 482 CrPC in order to circumvent the procedure whereby they would have been required to surrender, as the bail application could be entertained and heard only if the accused were in custody. It is important to note that no order adverse to the respondents-accused had been passed by any court, nor was there any miscarriage of justice or any illegality. In such circumstances, the High Court committed a manifest error of law in entertaining a petition under Section 482 CrPC and issuing a direction to the subordinate court to accept the sureties and bail bonds for the offence under Section 304 IPC. The effect of the order passed by the High Court is that the accused, after getting bail in an offence under Sections 324, 352 and 506 IPC on the very day on which they were taken into custody, got an order of bail in their favour even after the injured had succumbed to his injuries and the case had been converted into one under Section 304 IPC without any court examining the case on merits, as it stood after conversion of the offence. The procedure laid down for the grant of bail under Section 439 CrPC, though available

> to the respondents-accused, having not been availed of, the exercise of power by the High Court under Section 482 CrPC is clearly illegal, and the impugned order passed by it has to be set aside." (Emphasis supplied)

7. It was laid down by the Hon'ble Supreme Court in ***Minakshi Bala v. Sudhir Kumar, (1994) 4 SCC 142: 1994 SCC (Cri) 1181*** that once the Competent Court has framed the charges, the person aggrieved may invoke the revisional jurisdiction, and the High Court should not exercise its inherent jurisdiction under Section 482 of Cr.P.C., except in rare cases. A similar principle will apply in the present case.

8. In the present case also the petitioner has permitted the remedy of revision to lapse by not preferring the revision within time. Therefore, it is impermissible for her to circumvent the provision of filing the revision by filing the present petition under Section 528 of the BNSS.

9. It was submitted that the order was without jurisdiction. Reliance was placed upon the judgment of Patna High Court in ***Shakuntala Devi & others vs. State of Bihar, Criminal Miscellaneous No. 32558 of 2016, decided on 23.08.2024*** in support of this submission. This order was passed when the proceedings

were pending and not after termination of the proceedings. Hence, the cited judgment does not apply to the present case.

10. In view of the above, there exists no reason to exercise the extraordinary jurisdiction vested in this Court; hence, the present petition is dismissed. However, this order will not prevent the petitioner from availing the remedy available under the law, which shall be decided without being influenced by the observations made in this petition.

(Rakesh Kainthla)
Judge

27th October, 2025
(Ravinder)