

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-27725-2010

Reserved on: 13.02.2026

Pronounced on: 11.03.2026

Uploaded on: 16.03.2026

Shaminder Kaur and another

..... Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr.M.S. Khaira, Sr. Advocate with
Mr. Jawinder Singh, Advocate, for the petitioners.
Mr.Raj Karan Singh, AAG, Punjab.
Mr. Sumeer Singh Brar, Advocate,
for respondent No.2.

Rajesh Bhardwaj, J.

1. Prayer in the present petition filed under Section 482 Cr.P.C. is for quashing of protest petition treated as complaint No.41-A dated 02.05.2006 (Annexure P-3) and summoning order dated 10.06.2010 and all the subsequent proceedings arising therefrom.

2. Succinctly facts of the case are that initially, on an application moved by the District Manager, Punjab State Civil Supplies Corporation Ltd. (PUNSUP) (respondent No.2), FIR No.123 dated 07.07.2002, under Section 406 IPC was registered against the petitioners, on the allegations of embezzlement of rice amounting to Rs.1,47,79,137/-. After investigation, the Investigating Agency filed the cancellation report, however, on presentation of the same, learned Magistrate rejected the same and ordered for re-investigation. Thereafter, after re-investigation of the matter, second cancellation report was filed, which was accepted by learned Magistrate vide order dated 02.05.2006 with liberty to the complainant to pursue the protest petition by leading evidence. Thus, aggrieved by the order dated 02.05.2006, PUNSUP filed revision before learned Sessions Judge, Sangrur, which was

dismissed vide order dated 15.06.2007. Hence the petitioners are before this Court by way of filing the present petition for quashing of the protest petition which was treated as a complaint dated 02.05.2006 and the consequent summoning order dated 10.06.2010.

3. It has been submitted by learned Senior Counsel for the petitioner that the petitioners are the Directors of M/s Sular Rice & General Mills, which is a Private Limited company. He submits that the petitioners' company entered into an agreement with respondent No.2 i.e. Punjab State Civil Supplies Corporation Ltd. for milling the paddy supplied by respondent No.2 into rice for Food Corporation of India and any other Government Agency as directed by respondent No.2. He submits that one of the clauses of the agreement was that in case space was not provided for delivery of rice at FSD Sunam, the petitioners' company will not be responsible for delivery of the rice within the stipulated period. He has further submitted that as per the agreement, respondent No.2 supplied 59831 bags weighing 38890.15 quintals of paddy and the petitioners' company was required to supply 25795.83.500 quintals of rice after custom milling of the said paddy. It is submitted that due to non-availability of space with the FCI, the petitioners' company could only supply 11090.90.500 quintals of rice and remaining rice was lying with the premises of the petitioners' company. Thereafter, various steps were taken by the petitioners' company, but despite that no such place was provided to the petitioners' company, rather FIR No.123 dated 07.07.2002 was registered against them by respondent no.2. It is submitted that after a thorough investigation, the Investigation Agency finding that it is a case of civil nature as arbitration proceedings regarding the paddy in question were already pending before the Arbitrator, filed the

cancellation report, which was rejected by learned Magistrate and ordered for re-investigation. However, Investigating Agency again filed cancellation report on 26.11.2005 and the complainant filed a protest petition on 20.03.2006. Learned Magistrate vide order dated 02.05.2006 accepted the cancellation report with liberty to the complainant to proceed with the protest petition by leading evidence. It is further submitted that respondent No.2 filed revision No.11 dated 14.07.2006 before learned Sessions Judge, Sangrur, against the order dated 02.05.2006 and the same was dismissed by learned Court vide order dated 15.06.2007. It is submitted that respondent No.2 filed protest petition on 20.03.2006, however, after more than four years filing thereof, the petitioners have been summoned vide order dated 10.06.2010. He has submitted that as there was a clause in the agreement that all the disputes and differences arising out of or in any manner concerning the agreement, shall be referred to sole arbitration of the Managing Director PUNSUP or any person appointed by him on his behalf, PUNSUP initiated arbitration proceedings against the petitioners and the same were decided in favour of the petitioners vide Arbitration Award dated 07.05.2004, which were further assailed by the complainant- PUNSUP by way of filing application under Section 34 of the Arbitration and Conciliation Act, 1996, which were also dismissed vide order dated 13.03.2009. FAO-4376-2010 filed by the PUNSUP impugning the order dated 07.05.2004 was also dismissed by this Court vide order dated 09.08.2016 and thereafter, SLP(C) No.3655 of 2017 filed against the order dated 09.08.2016 was also finally dismissed by Hon'ble Apex Court vide order dated 01.10.2024. In light of the aforesaid submissions, learned Senior Counsel contends that the entire controversy arises out of contractual obligations between the parties,

specifically governed by Clause 22 of the agreement, which provides for mandatory adjudication through arbitration. The arbitration proceedings, initiated at the instance of PUNSUP, have already culminated in favour of the petitioners' company and have attained finality up to the Hon'ble Supreme Court. It is, therefore, argued that the continuation of the protest petition and the impugned summoning order amount to a gross abuse of the process of law and are liable to be quashed.

He has relied upon the law laid down by Hon'ble Apex Court in the following cases:-

- i). **Bal Kishan Das vs. P.S. Nayar, 1991 AIR** (Supreme Court) 1531;
- ii). **Kailash Verma vs. Punjab State Civil Supplies Corporation and another, 2005(2) SCC 571;**
- iii). **M/s Pepsi Foods Ltd. Vs. Special Judicial Magistrate, 1998 AIR** (Supreme Court) 128;
- iv). **Daljit Singh and others vs. Sukhwinder Kaur and another, 2016(4) RCR (Criminal)694; and**
- v). **Sundeep Kumar Bafna vs. State of Maharashtra and another; 2014** AIR (Supreme Court) 1745.

4. On the other hand learned counsel for respondent No.2 has vehemently opposed the submissions made by learned Senior Counsel for the petitioners. He has submitted that investigation in the present case was conducted in an unfair manner and hence, learned Magistrate, granted liberty to respondent No.2 to contest the same by way of filing the protest petition. He has submitted that in terms of the order passed by this Court on 04.10.2009, physical verification of the stocks was conducted and the stocks lying with the miller were totally damaged and did not relate to PUNSUP. He, thus, submits that paddy provided by the PUNSUP was embezzled by the petitioners. He has relied upon the judgments in the following cases:-

- i). **State of Punjab vs. Pritam Chand and others**, 2013 SCC Online P&H 26723;
- ii). **Trisuns Chemical Industry vs. Rajesh Agarwal and others**, (1999) 8 Supreme Court Cases 686;
- iii). **Indian Oil Corporation vs. NEPC India Ltd. and another**, (2006) 6 Supreme Court Cases 736;
- iv). **Rajesh Bajaj vs State NCT of Delhi and another**, (1999) 3 Supreme Court Cases 259;
- v). **Sri Krishan Agencies vs State of Andhra Pradesh and another**, (2009) 1 Supreme Court Cases 69; and
- vi). **K. Jagadish vs Udaya Kumar G.S. and another**, (2020) 14 Supreme Court Cases 552.

5. Learned State counsel has also argued on the same line as argued by learned counsel for respondent No.2 and prays for dismissal of the present petition.

6. This Court has heard learned counsel for the parties and perused the record with their able assistance. It is deciphered that the controversy between the parties emanated from a contractual agreement executed between the petitioners' company and PUNSUP for custom milling of paddy. The obligations of the parties were governed entirely by the terms and conditions of the agreement, which contained a specific arbitration clause for resolution of disputes. It is observed that the dispute in question had already been referred to arbitration in terms of the agreement. Learned Arbitrator, after considering the material on record, passed an award in favour of the petitioners' company. The objections filed against the arbitral award were dismissed by the competent Court, and the appeal preferred thereafter was also rejected. The Special Leave Petition filed before the Hon'ble Supreme Court was ultimately dismissed, thereby affirming the arbitral award and bringing the matter to finality. Hence, this Court finds that the allegations in the criminal case arose out of the alleged non-

fulfilment of contractual obligations and does not make out the basic requirements of any criminal offence. The matter, being purely civil in nature, had already been conclusively adjudicated through arbitration proceedings up to the Hon'ble Supreme Court. In such circumstances, the continuation of the criminal proceedings is unwarranted and an abuse of the process of law.

7. Parameters for invoking its power under Section 528 of BNSS, 2023 by this Court, have been laid by Hon'ble Supreme Court in **State of Haryana vs. Bhajan Lal**, 1992 Supp (1) SCC 335, which read as under:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

- (1) “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.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) 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 due to private and personal grudge.”

8. Hon'ble Supreme Court in **Gian Singh vs. State of Punjab and another, (2012) 10 SCC 303**, has further held as under:-

“61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised

in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or

continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

9. Hon’ble Supreme Court in the recent judgment rendered in **S.N.Vijayalakshmi and others vs. State of Karnataka and another, 2025 AIR, Supreme Court 3601**, has held as under:-

“42. Coming to the second question i.e., whether civil and criminal proceedings both can be maintained on the very same set of allegations qua the same person(s), the answer stricto sensu, is that there is no bar to simultaneous civil and criminal proceedings. If the element of criminality is there, a civil case can co-exist with a criminal case on the same facts. The fact that a civil remedy has already been availed of by a complainant, ipso facto, is not sufficient ground to quash an FIR, as pointed out, inter alia, in **P Swaroopa Rani v M Hari Narayana, (2008) 5 SCC 765** and **Syed Aksari Hadi Ali Augustine Imam v State (Delhi Admn.), (2009) 5 SCC 528**. The obvious caveat being that the allegations, even if having a civil flavour to them, must prima facie disclose an overwhelming element of criminality. **In the absence of the element of criminality, if both civil and criminal cases are allowed to continue, it will definitely amount to abuse of the process of the Court, which the Courts have always tried to prevent by putting a stop to any such criminal proceeding, where civil proceedings have already been instituted with regard to the same issue, and the element of criminality is absent. If such element is absent, the prosecution in question would have to be quashed.** In this connection, **Paramjeet Batra v State of Uttarakhand, (2013) 11 SCC 673** can be referred to:

‘12. ... Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.’ (emphasis supplied)

43. In **Usha Chakraborty v State of West Bengal, (2023) 15 SCC 135**, while quashing the FIR therein and further proceedings based thereon, it was observed ‘...the factual position thus would reveal that the genesis as also the purpose of criminal proceedings are nothing but the aforesaid incident and further that the dispute involved is essentially of civil nature.’”

10. There is no dispute regarding the law relied upon by learned counsel for respondent No.2, however, the same are distinguishable in the fact and circumstances of the present case.

11. Weighing the facts and circumstances of the present case, on the anvil of law settled, this Court finds that prosecution of the petitioners in the impugned protest petition is nothing but an abuse of the process of the Court. Accordingly, the petition is allowed and protest petition dated 02.05.2006, which was treated as complaint and the summoning order dated 10.06.2010 alongwith consequent proceedings arising therefrom, are quashed.

11.03.2026
sharmila

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No

(RAJESH BHARDWAJ)
JUDGE