

(2021) 08 SHI CK 0019

High Court Of Himachal Pradesh

Case No: Criminal Miscellaneous Petition (M) No. 48 Of 2021

Sushil Verma

APPELLANT

Vs

State Of H.P

RESPONDENT

Date of Decision: Aug. 3, 2021**Acts Referred:**

- Code Of Criminal Procedure, 1973 - Section 482
- Code Of Criminal Procedure, 1898 - Section 561A

Hon'ble Judges: Anoop Chitkara, J**Bench:** Single Bench**Advocate:** Anil Kumar, Nand Lal Thakur, Ram Lal Thakur, Rajat Chauhan**Final Decision:** Allowed

Judgement

Anoop Chitkara, J

1. The petitioner, arraigned as accused in the FIR mentioned above, has come up before this Court under Section 482, Code of Criminal Procedure,

1973, for quashing the proceedings on grounds that the investigations and the allegations does not make out any case.

2. Facts necessary to decide the present petition are that the main allegations against Anil Kaul (A-1) pertain to the acts of commission, omission or

negligence. The allegations against the present petitioner is that an amount of Rs.2,00,000/- was transferred in his account and he did not inform the

bank about such receipt and, in fact, he spent the same.

REASONING:

3. The status report filed in this petition reveals that the main accused Anil Kaul (A-1), has transferred an amount of Rs.2,00,000/- in the account of

the petitioner, Sushil Verma (A-2) on May 22, 2017. On receipt of such amount, the petitioner withdrew a sum of Rs.35,000/- for his own expenditure

and also transferred an amount of Rs.1,20,017/- for payment of fee of his wife. He did not inquire from the bank that from where and from which

source the money was transferred in his account. On being arrayed as an accused, the petitioner had approached this Court by filing anticipatory bail.

This Court had granted him pre-arrest bail on 22.12.2020. On 28.12.2020, petitioner approached the investigating officer and volunteered to deposit the

entire amount, which was wrongly deposited in his account. Subsequently, he did deposit the entire amount of Rs.2,00,000/- with the police. A perusal

of the status report and investigation reveals that there is no allegation of any conspiracy between the main accused Anil Kaul (A-1) and the present

petitioner, Sushil Verma (A-2). The stand of Sushil Verma (A-2) is very clear that this money was deposited in his account and instead of verifying

the reasons for such deposit, he paid fee of his wife and also spent some amount as his own expenditure. It appears that Sushil Verma (A-2) thought

that it was a bounty and he was not honest enough to inquire it from the bank, but, in fact, it is the bank, on whose fault the money went into the

account of the petitioner, for which, he cannot be held criminally liable. His subsequent conduct of repaying the entire amount shows his bonafide. In

fact, if the investigating officer had approached him earlier, then possibility of his depositing the entire amount earlier, cannot be ruled out. The

investigation reveals that without loss of time, the petitioner paid back the entire amount. In the given facts, there is neither intention nor mens rea and

actus reus on the part of the petitioner to have conspired with Anil Kaul (A-1) to transfer money in his account, rather, his conduct of repaying the

amount absolve him from the criminal liability in the facts peculiar to the case.

JUDICIAL PRECEDENTS ON JURISPRUDENCE OF QUASHING:

4. The law is almost settled by various pronouncements of the Hon'ble Supreme Court that when the FIR and the investigation do not make out any

case or the prosecution is inherently and patently illegal, and the matters that fulfill the criteria for quashing, the High Court resorting to S. 482 CrPC

can quash such FIR and consequent proceedings. In R.P. Kapur v State of Punjab, AIR 1960 SC 866, a three-member Bench of Hon'ble

Supreme Court holds, "It is well established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper

case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Ordinarily, criminal proceedings instituted

against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings

at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent

jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the

proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal

proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would

secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and

it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, the High Court would be justified in quashing

the proceedings on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where

the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not

constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First

Information Report to decide whether the offence alleged is disclosed or not. In such case, it would be legitimate for the High Court to hold that it

would be manifestly unjust to allow the process of the criminal Court to be issued against the accused person. A third category of cases in which the

inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the

accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or

manifestly fails to prove the charge. In dealing with this class of cases, it is important to bear in mind the distinction between a case where there is no

legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal

evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under S. 561-A, the High Court

would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it

would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the

accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court

under S. 561-A in the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point (Vide : In Re: Shripad G.

Chandavarkar, AIR 1928 Bom 184, Jagat Chandra Mozumdar v. Queen Empress, ILR 26 Cal 786, Dr. Shankar Singh v. State of Punjab, 56 Pun LR

54 : (AIR 1954 Punj 193), NripendraBhusan Roy v. GobinaBandhu Majumdar, AIR 1924 Cal 1018 and Ramanathan Chettiyar v.

SivaramaSubramania, ILR 47 Mad 722 : (AIR 1925 Mad 39).

5. In MadhavraoJiwaji Rao Scindia v SambhajiraoChandrojiraoAngre, 1988 (1) SCC 692, a three judges bench of the Hon'ble Supreme Court

holds "[7]. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is

as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special

features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is

so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak

and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the

special facts of a case also quash the proceeding even though it may be at a preliminary stage.

CONCLUSION:

6. This Court has inherent powers under Section 482 of the Code of Criminal Procedure to interfere in this kind of matter.

7. An analysis of the entire allegations and the investigation does not contain legally admissible evidence and thus, does not make out any prima facie

case against the petitioners.

8. Given the entirety of the case and judicial precedents, I am of the considered opinion that the continuation of these proceedings will not suffice any

fruitful purpose whatsoever.

9. In *Himachal Pradesh Cricket Association v State of Himachal Pradesh*, 2018 (4) Crimes 324, Hon'ble Supreme Court holds "[47]. As far as

Writ Petition (Criminal) No. 135 of 2017 is concerned, the appellants came to this Court challenging the order of cognizance only because of the

reason that matter was already pending as the appellants had filed the Special Leave Petitions against the order of the High Court rejecting their

petition for quashing of the FIR/Chargesheet. Having regard to these peculiar facts, writ petition has also been entertained. In any case, once we hold

that FIR needs to be quashed, order of cognizance would automatically stands vitiated.

10. Given above, this is a fit case where the inherent jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure is invoked to

quash the proceedings mentioned above. The FIR mentioned above is quashed qua the petitioner Sushil Verma, and all the consequential proceedings

are also quashed and set aside qua Sushil Verma. His bail bonds are accordingly discharged. All pending application(s), if any, stand closed.

11. In the facts and circumstances peculiar to this case, the petition is allowed in the aforementioned terms.

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