(2032) 12 SHI CK 0001

Himachal Pradesh HC

Case No: CR. MMO No. 1203 Of 2025

Tej Raj @ Tej Singh		APPELLANT
	Vs	
State Of Himachal Pradesh & Others		RESPONDENT

Date of Decision: Dec. 16, 2032

Acts Referred:

- Bharatiya Nagarik Suraksha Sanhita, 2023-Section 528
- Code Of Criminal Procedure, 1973-Section 439, 482
- Indian Penal Code, 1860-Section 304, 324, 352, 506

Hon'ble Judges: Rakesh Kainthla, J

Bench: Single Bench

Advocate: R.L. Verma, Jitender K. Sharma

Final Decision: Disposed Of

Judgement

Rakesh Kainthla, J

1. The petitioner has filed the present petition for setting aside the order dated 27.10.2025, passed by the learned Judicial Magistrate First Class, Karsog, District Mandi, H.P. (learned Trial Court). It has been asserted that the petitioner was arrayed as an accused in a complaint pending before the learned Trial Court. The petitioner could not appear before the learned Trial Court due to unavoidable circumstances. Learned Trial Court issued a proclamation directing the appearance of the petitioner on 02.01.2026. The petitioner was attending the Court till 02.02.2024. He suffered chest pain and could not appear before the Court. The date of the hearing was not communicated to him by his counsel. The petitioner visited Netaji Subhash Chander Bose, Zonal Hospital, Mandi, District Mandi, H.P. and was informed that he was suffering fr m Tuberculosis. The petitioner suffered a fracture of his left arm and could not visit the Court. The Court issued the proclamation requiring the presence of the petitioner. Hence, the petition.

2. I have heard Mr R.L. Vemra, learned counsel for the petitioner and Mr Jitender K. Sharma, learned Additional Advocate General, for t e respondent/State.

3. Mr R.L. Verma, learned counsel for the petitioner, subm tted that the petitioner could not appear before the learned Trial Court due to the circumstances beyond his control. He is ready and willing to appear before the learned Trial Court on each and every date of hearing. Hence, he prayed that the present petition be allowed and the order passed by the learned Trial Court be set aside. He relied upon the judgment passed by Coordinate Bench of this Court in Arun Ran vs. M/s Shiva Electrical Industries and another 2024: HHC:9761 in support of his submission.

4. Mr Jitender K. Sharma, learned Additional Advocate General, for the respondents/State, submitted that the petitioner has an alternate remedy of surrendering before the learned Trial Court, and this Court should not exercise the extraordinary jurisdiction vested in it under Section 528 of BNSS. Hence, he prayed that the present petition be dismissed.

5. I have given conside able thought to the submissions made at the bar and have gone thro gh the records carefully.

6. There is a f rce in the submission of learned Additional Advocate General, for the respondents/State, that the petitioner has a remedy to surrender before the learned Trial Court and seek an appropriate order from the learned Trial Court. The jurisdiction vested n the Court under Section 528 of BNSS corresponding to Section 482 of Cr.P.C. is extraordinary in nature and should be exercised sparingly. Such jurisdiction should not be exercised when an alternative remedy is available to the petitioner.

7. It was held in Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551: 1978 SCC (Cri) 10 that inherent power 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:

(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 ther pr vision of the Code.

8. It was laid down by the Full Bench of Delhi High Court in Gopal Dass vs State AIR 1978 Del 138, that the power under Section 482 of Cr.P.C. is vested in the Co rt to make such order as may be necessary to give effect to any rder under the Code,

prevent abuse of the process of any ourt or otherwise to secure the ends of justice. This power 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 consider 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 S.C. 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 s a u e which saves that power. Putting it in another fo m, he 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 Co rt o ght to apply the provisions of the statute which are made advisedly to govern the particular subject matter. (Emphasis supplied)

9. 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 power under section 482 of Cr.P.C. is extraordinary and should not be exerc sed 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 emp wered the convicted accused to prefer a statutory appeal against the conviction of the offence. The High Cou has intervened at an uncalled-for stage and soft-pedalled the course of justice at a very crucial stage of the trial.

xxxxx

9. In our view, the rder 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 has overlooked the important legal aspect that the accused have 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.

10. It was held by the Honble Supreme Court in Hamida v. Rashid, (2008) 1 SCC 474, that the inherent power 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 r 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 Maha ash a [(1977) 4 SCC 551: 1978 SCC (Cri) 10: AIR 1978 SC 47], and it was held as under : (SCC p. 555, para 8)

The following principles may be stated in relation to the exercise f 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;

(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 f 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 inv ked in respect of any matter covered by specific provisi ns f the Code or if its exercise would infringe any specific provision of the Code. It was further observed that the High ourt overlooked 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 sta e 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 whereunder 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 igh Court is that the accused after getting bail in an of ence 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 Sec ion 304 IPC without any court examining the case on me i s, as it stood after conversion of the offence. The procedure laid down for the grant of bail under Section 439 CrPC, tho gh available to the respondents-accused, having not been availed of, the exercise of power by the High Court under Secti n 482 CrPC is clearly illegal, and the impugned order passed by it has to be set aside. (Emphasis supplied)

11. In the present case, the petitioner has a remedy to surrender before t e learned Trial Court and seek bail; therefore, this Court should not exercise the inherent jurisdiction vested in it.

12. Even on merits, no case of exercise of jurisdiction is established. The petitioner relied on photocopies of prescription slips (Annexure P-2 (collectively) to show that he had a reasonable cause for non-appearance before the learned Trial Court. The prescription slip (Annexure P-2) does not contain the patient's name and cannot be linked to the petitioner. There is nothing in this prescription slip indicating that the petitioner was suffering from Tuberculosis as alleged in the petition. The prescription slip does not mention that the patient was advised to stay indoors or isolated. Therefore, this prescription slip does not assist the petitioner.

13. The second prescription slip is regarding the chronic pain. The medicines were prescribed. There is nothing in this prescription slip that petitioner was advised not to go utside the home; therefore, this prescription slip cannot be used for concluding that the petitioner had a reasonable cause for not appearing before the learned Trial Court.

14. The matter has been pending before the learned Trial Court since 2021. As per the petition, it was listed for defence evidence when the petitioner absented from the Court, and the Court had to issue a proclamation to secure his presence. This shows that the petitioner has repeatedly absented from the Court, and the learned Trial Court was justified in issuing the proclamation.

15. The judgment in Arun Rana (supra) will not help the petitioner because the Coordinate Bench of this Court found reasonable cause was assigned by the petitioner in the cited case. In the present case, the petitioner has not established any reasonable cause for non-appearance. Further, the copies of the order-sheets have not been filed to demonstrate any error in the procedure adopted by the learned Trial Court; therefore, the order passed by the learned Trial Court cannot be set aside.

16. No other point was urged.

17. In view of the above, the present petition fails, and it is dismissed.

18. The petition stands disposed of, so also the pending miscellaneous applications, if any.

19. The observati ns made herein before shall remain confined to the disposal of the petition and will have no bearing, whatsoever, on the merits of the case