

Applicability of Writ Jurisdiction in Quashing FIR and the Inherent Powers of High Courts to secure Ends of Justice.

By: Pradipta Nath, Independent Researcher

Introduction

In *Abhishek Vs. State of Madhya Pradesh*¹, the supreme court of India discussed the scope of writ jurisdiction for quashing of criminal proceedings. The Supreme Court even clarified that section 482 of the Cr.PC² is eligible to be invoked even after submission of the chargesheet. While deciding the case, the bench took reference of *Joseph Salvaraj A. vs. State of Gujarat and others*³ and *Anand Kumar Mohatta and another vs. State (NCT of Delhi), Department of Home and another*⁴.

The quashing of criminal cases can also be done under Article 226 of the Constitution. Recently in *Sri Abhijit Gangopadhyay & Anr. Vs. The State of West Bengal & Ors.*⁵, the Hon'ble Calcutta High Court entertained the writ petition and stayed the FIR against the petitioner. The petitioner in this case has challenged the FIR bearing no. Tamluk P.S. Case No. 411 of 2024 dated 4.5.2024 under Sections 143/323/325/307/354B/379/427/506/109/34 IPC read with Sections 25/27 of the Arms Act filed against him.

The landmark judgement on quashing is the *State of Haryana Vs. Bhajan Lal*⁶, but the law did not remain stagnant over the parameters for quashing that was set in *Bhajan Lal (Supra)*. In *Salib @ Shalu @ Salim –vs- State of UP and ors.*⁷, the Hon'ble Supreme Court of India state that the court while exercising its jurisdiction under section 482 of the Cr.pc (now S. 530 of BNSS) or under Article 226 of the Constitution of India, need to take into account the overall circumstances leading to the initiation or registration of the case as well as the materials collected in the course of the investigation. In frivolous or vexatious proceedings, the court has a duty to look into the circumstances of the case and if needed read the FIR/complaint in between the lines.

¹ 2023 LiveLaw (SC) 731; 2023INSC779

² Section 530 of the *Bhartiya Nagarik Suraksha Sanhita, 2023* w.e.f 01.07.2024

³ (2011) 7 SCC 59

⁴ (2019) 11 SCC 706.

⁵ WPA 13815 of 2024

⁶ 1992 Supp(1) SCC 335

⁷ 2023 SCC OnLine SC 947

Analysis of the Bhajan Lal Judgement (Supra)

1. Article 226 of the Constitution as well as Section 482 of the Code of Criminal Procedure can be exercised to quash a criminal proceeding. Section 530 of the Bhartiya Nagaril Suraksha Sanhita, 2023 is the new section w.e.f 01-07-2024 in place of section 482 of the Code of Criminal Procedure, 1973. Citations: 1992 AIR 604, 1990 SCR SUPL. (3) 259, AIR 1992 SUPREME COURT 604, (2006) 1 ALLCRILR 515, 1992 SCC (SUPP) 1 335, (1992) 3 SCR 735 (SC), (1991) 28 ALLCRIC 111, 1991 CHANDLR(CIV&CRI) 619, (1991) CRICJ 100, (1991) 1 ALLCRILR 68, (2005) 4 CAL HN 456, (2005) 2 CAL LJ 504, (2006) 1 CALLT 475, (1991) IJR 312 (SC), (1992) MADLW(CRI) 257, (1991) 1 RECCRIR 383, (2006) 1 CURCRIR 209, (1990) 4 JT 650 (SC), 1992 SCC (CRI) 426.

2. This is the decision based upon the division bench comprised of two judges. PANDIAN, S.R. (J) & REDDY, K. JAYACHANDRA (J)

3. Fact of the case: -

i. Chowdhury Bhajanlal was a minister at first and then became the chief minister of the State of Haryana. Then, he also became union minister. After the defeat of congress in the State of Haryana, Devi Lal came into power and became the new chief minister. After coming into power Devi Lal, his government filed cases against Bhajanlal and his family members on corruption charges. It was also alleged that Bhajanlal and his relatives possessed disproportionate properties which meant that the properties were not as per their income, and these were achieved when they were in political power.

ii. As Bhajanlal was the former chief minister, that's why the complaint was forwarded to the SP. SP directed the SHO to register a FIR and start investigation into the alleged offence.

iii. The registration of FIR was done and accordingly an investigation was started. Bhajanlal approached the Punjab & Haryana High Court to quash the very FIR. It was pleaded that the FIR was politically rivalry, and all the allegations are totally alien to actuality.

iv. Punjab & Haryana High Court allowed the petition filed by Bhanjanlal stating that there is no ingredient of cognizable offence and quashed the FIR. In turn, the State of Haryana went to the Supreme Court to challenge the impugned order of the Punjab & Haryana High Court.

4. The issue of the case is whether the SHO was a competent authority to investigate matters pertaining to corruption or not. The Supreme Court stated that as alleged that the accused persons were in possession of disproportionate properties and has acquired out of political influence is a matter of investigation and cannot be determined in this stage.

5. The Supreme Court held that section 482 of the cr.pc is the inherent power conferred to the High Courts and should not be used generally in all the cases. Only in appropriate or genuine cases or rare cases where in the opinion of the High Court the criminal complaint has been made out of revenge or vengeance, the inherent power under section 482 of the Cr.Pc can be used.

6. The Supreme Court also held that though it cannot provide a straight cut jacket formula regarding using section 482 of the Cr.Pc. as all the cases are unique in their very nature and cannot be compared with other cases. But the Supreme Court has laid down an overall principle comprised of different types of 7 (seven) conditions under which the FIR can be quashed.

7. The 7 conditions are: -

i. Where the allegations in FIR do not constitute offence.

ii. If the allegations of the FIR along with the material no cognizable offence is made.

iii. When the allegations along with the evidence do not disclose cognizable offence.

iv. When the allegation in the FIR constitutes only a non-cognizable offence, no FIR should be registered without the order of the Magistrate.

v. If the complaint is absurd and inherently improbable on the basis of which no man with reasonable prudence will ever reach conclusion that there are sufficient grounds to proceed against the accused.

vi. If the complaint is a malafide.

vii. Where there is a legal bar to institute a FIR, then to such, the FIR must be quashed or there is a specific provision under which the criminal proceedings must be drawn up but is not registered in that accordance, then the FIR must be quashed.

7. If a case falls under any of the above stated parameters, then only the High Courts can exercise the inherent power to quash the criminal case or FIR else not.

8. The Supreme Court of India set aside the judgement of Punjab & Haryana High Court and allowed the appeal of the State of Haryana against Bhajanlal and his relatives.

9. The Supreme Court also held that the SHO was not the competent authority to investigate the matter pertaining to corruption and in case the State of Haryana wants to proceed with this case, it needs to have the investigation by a competent authority as provided under the Prevention of Corruption Act.

10. Though a complaint made from a grudge cannot be false, it may also be true. Criminal Law can be put into motion by any person and there is no attraction of limitation act. The complaint made from a grudge should not be considered as ground for quashing. If this happens, then trust in the judiciary will be diminished; the accused persons who may be victims as well will be more prone to select other alternatives other than approaching court to quench the thirst of vengeance. Rather the FIR may be quashed on the other six grounds as mentioned in the Bhajanlal case (supra).

11. The toss between grudge Vs. evidence collected so far, the latter should find place while invoking the inherent power. There may be a grudge or counterblast of complainants filed by the complainant, but that does not lower the value of evidence collected by the Investigating Officer which is sufficient to prove guilt.

12. The charge sheet may also be quashed under these laws (Article 226/Section 530 of the BNSS). The filing of chargesheet is not a bar in exercising the laws for the High Courts.

Comparative analysis of section 482 of the Code of Criminal Procedure with section 530 of the Bhartiya Nagarik Suraksha Sanhita

Section 530 of the Bhartiya Nagarik Suraksha Sanhita corresponds with the erstwhile section 482 of the Code of Criminal Procedure. However, the legislature did not change the substance of this section and remained ditto. In many of the availing resources from the net it has been noted that section 482 of the Cr.Pc has been mentioned to correspond with section 528 of the BNSS. Section 528 of the BNS is about 'Practicing advocate not to sit as

Magistrate in certain Courts' which is totally different from the provision of section 530 of the BNSS regarding the inherent powers of the High Court.

Scope of Section 530 of the BNSS

The phrase used in section 530 of the BNSS “or otherwise to secure the ends of justice” is substantially alike to Article 142 of the Constitution of India which talks about “may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it”. If these two laws are read together, it is understood that the legislature gave a wide range of discretionary power to the judiciary to pass such order or orders for the end of justice. The phrase contained in section 530 of the BNSS “or otherwise to secure the ends of justice” has a larger connotation. It opens the scope of judicial review which will substantially give rise to judicial activism by the High Courts. In *Tariq Ahmad Dar Vs NIA*, it was held that where a person has been detained in custody in terms of section 306(4) of the Code of Criminal Procedure, the person can be released on bail in exercise of the inherent power as conferred under section 482 of the Code of Criminal Procedure.

The term ‘Justice’ is a very broad term and cannot be defined in one sentence or word. A theory of justice must rely fundamentally on partial orderings based on the intersection – or commonality – of distinct rankings drawing on different reasons of justice that can all survive the scrutiny of public reasoning. Prof. Amartya Sen spoke about ‘Niti’ and ‘Nyaya’. The ‘niti’ relates to the political theory of the State, which if channelized properly then the State will be a welfare State, whereas the latter, Nyaya, is by product of niti. Nyaya deals with the enforcement of laws and regulations. For the supporters of Bentham, ‘Nyaya’ will mean to serve happiness to the majority people. But in a Gandhian State, ‘Nyaya’ cannot sustain the doctrine ‘Greatest good to the greatest number’ rather than it mean to sacrifice, compassion, forgiveness and survival of all. The Sarvodaya has its significance to kill the crime not the criminal. When an accused person is brought before the court, he may be a criminal, but in the passage of time his mind may change and be full of repentance. That may be the reason why the theory of restoration of justice system got a place in the new criminal codes.

The Hon'ble Supreme Court in *M Siddiq (D) Thr Lrs Vs. Mahant Suresh Das & Ors*⁸ the Hon'ble Supreme Court described its power under Article 142 – “The phrase ‘is necessary for doing complete justice’ is of a wide amplitude and encompasses a power of equity which is employed when the strict application of the law is inadequate to produce a just outcome. The demands of justice require a close attention not just to positive law but also to the silences of positive law to find within its interstices, a solution that is equitable and just. The legal enterprise is premised on the application of generally worded laws to the specifics of a case before courts. Even where positive law is clear, the deliberately wide amplitude of the power under Article 142 empowers a court to pass an order which accords with justice. For justice is the foundation which brings home the purpose of any legal enterprise and on which the legitimacy of the rule of law rests. The equitable power under Article 142 of the Constitution brings to fore the intersection between the general and specific. Courts may find themselves in situations where the silences of the law need to be infused with meaning or the rigours of its rough edges need to be softened for law to retain its humane and compassionate face. Above all, the law needs to be determined, interpreted and applied in this case to ensure that India retains its character as a home and refuge for many religions and plural values. It is in the cacophony of its multi-lingual and multi-cultural voices, based on a medley of regions and religions, that the Indian citizen as a person and India as a nation must realise the sense of peace within. It is in seeking this ultimate balance for a just society that we must apply justice, equity and good conscience.”

Section 530 of the BNSS is not limited only to quashing of FIR or criminal proceedings. It can be used to challenge any order of the Magistrate Court or Session Court which needs to be corrected like if any Magistrate court unreasonably expunge any witness of the prosecutrix or issue non-bailable warrant unreasonably or otherwise.

The High Court has very limited discretion to exercise its power under section 482 of the Cr.Pc for quashing. The High Courts are known as the court of law, the lower courts are known as the court of facts. The trial courts are empowered to admit evidence. The High Court can only decide whether the admission of the evidence was in accordance with the law or not. While deciding a petition filed under section 530 of the BNSS, 2023, the High Courts should restrict themselves in conducting a mini trial. It is settled that the court needs to consider whether there are sufficient evidence or materials available against the accused

⁸ Civil Appeal Nos 10866-10867 of 2010; AIR ONLINE 2019 SC 1420, 2020 (1) SCC 1, (2019) 15 SCALE 1, (2019) 4 CURCC 182, (2019) 6 ALLMR 482, (2019) 6 ALL WC 5537, (2019) 8 MAD LJ 117

person to conduct the trial or not. The charges against the accused person can only be proved during the trial by leading evidence. Prior to that i.e., filing of chargesheet or commitment or framing of charge, the matter is in preliminary stage where no court can decide whether the accused person is guilty or not. In Central Bureau of Investigation Vs. Aryan Singh⁹, the Supreme Court did not consider the view of 'malicious prosecution' which was stated as one of the 7 (seven) guiding principle in its Bhajanlal (Supra) judgement. The Supreme Court withheld the decision of the High Court to set it aside, stating that whether the criminal proceeding is malicious or not, is not required to be considered at this stage. The same is required to be considered at the conclusion of the trial.

The development of the law regarding quashing has made an inordinate delay as a ground for quashing of the criminal case. The inordinate delay in lodging a criminal complaint was carried out after 8 years of the commission of the crime. This has been done in Chanchalapati Das vs State of West Bengal and Madhupandit Das vs State of West Bengal¹⁰. The Supreme Court opined that the inordinate delay of 8 years in filing the complaint is itself sufficient ground to quash the FIR.

Limitation of Section 530 of the BNSS

The BNSS has been enacted to streamline the procedures for conducting criminal trials. But this section also has an exception which is impliedly applicable in criminal jurisprudence. Any order passed under a special act; recourse should be availed from that very special act if it has been provided for the same. In Phoenix Arc Private Limited vs V. Ganesh Murthy, the Supreme Court held that an order under section 14 of the SARFAESI Act cannot be quashed under section 482 of the Cr.Pc as such remedy has been provided under the SARFAESI Act itself and the aggrieved person can only avail it under the Act. The erstwhile section has been changed which now corresponds to section 530 of the BNSS, but the principle evolved from this case laws is applicable countrywide. Likewise petition under section 482 of the Cr.Pc (now 530 of BNSS) is not maintainable for cases filed under section 12 of the Protection of Women from Domestic Violence Act, 2005. In Sanjeev Kumar & ors Vs Sushma Devi¹¹, the Himachal Pradesh High Court reiterated that petitions under Section 482 CrPC are not

⁹ 2023 LiveLaw (SC) 292

¹⁰ 2023 LiveLaw (SC) 446

¹¹ 2023 LiveLaw (HP) 48

maintainable for challenging the proceedings under Section 12 of the Domestic Violence Act. The proceedings under section 12 of the PWDV Act are quasi civil in nature and thus cannot be equated with other usual criminal cases. Further the act itself provides for appeal under section 23, so the aggrieved person may avail the remedy under that section.

The scope of quashing criminal cases of a serious nature is more limited. The Supreme Court in *Manik B vs Kadapala Sreyes Reddy*¹², observed that the High Courts cannot go into the correctness of the material placed by the police officials in the chargesheet. The court can only exercise the discretion if in its reasonable opinion, no case is made out at all even if taken in its face value.

Section 530 of the BNSS did not provide any bar for placing a second application on new grounds after rejection of the first application. But this bar has been made a law by the Supreme Court in *Bhisham Lal Verma V. State of Uttar Pradesh* and another¹³, where it was observed that even though there is not bar provided in section 482 of the Cr.Pc on second application based on new grounds, but such second application is not maintainable when the grounds for relief could have been availed at the first instance.

Conclusion

The law regarding quashing is still evolving. The new section has been made ditto with the erstwhile section. While exercising discretionary power for quashing any order or FIR, the court is guided by the judgements of the Supreme Court or take reference of other High Courts. Exercising of inherent power goes with the application of judicial application of human intellect which ought to vary from circumstances to circumstances. The High Court should step in where it is of the opinion that conducting of the trial will be abuse of the power.

End

¹² 2023 LiveLaw (SC) 642

¹³ 2023 LiveLaw (SC) 935