In the High Court of Himachal Pradesh, Shimla. CrMMO No.964 of 2024 a/w CrMMO No. 999 of 2024.

Date of Decision:10.01.2025. Coram: Hon'ble Mr. Justice Virender Singh, Judge CrMMO No. 964 of 2024 Anjum Ara and others ...Petitioners

V/s

State of Himachal Pradesh and others ....Respondents CrMMO No. 999 of 2024 Devakar Sharma and others ...Petitioners

V/s

State of Himachal Pradesh and others ....Respondents

Bharatiya Nagarik Nyaya Sanhita (BNSS) 2023 Section 528– Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989–Section 3(1)(p) –Quashing of FIR–Whether FIR can still be quashed when police has already prepared a cancellation report–An FIR is registered under Section 3(1)(p) of the SC&ST Act against the petitioners by the R-No.4 alleging discriminatory actions against her husband R-No. 5 by the petitioners and other senior police officers– The complainant alleged racial/caste discrimination and wrongful actions such as forced eviction, financial penalties, and withholding of retirement benefits by the petitioners–The petitioner sought quashing of FIR on the ground that FIR is false and misuse of law as action is taken against the husband of the complainant as per law– Held–The investigation by the State CID found no evidence to substantiate the allegations in the FIR, and a cancellation report was prepared–The petitioners cannot be compelled to suffer the sting of the registration of the FIR, that too, under such a stringent statute, for the acts, which have been done by them, in discharge of their official duties, that too, when the allegations, levelled against them,

could not be established, during the investigation–FIR is ordered to be quashed–Petition allowed. (Paras 26, 32 and 33)

Cases referred:

(1) Gulam Mustafa vs. State of Karnataka and another, 2023 SCC OnLine SC 603.

(2) State of Karnataka vs. L. Muniswamy and others, reported in AIR 1977 Supreme Court 1489.

(3) Manik Taneja & Anr. Vs. State of Karnataka & Anr., (2015) 1 SCR 156. Parties represented by:

For the Petitioners: Mr. C.N. Singh, Dr. Nidhi Singh, Mr. Devender Sharma and Mr. Anshul Gandhi, Advocates and Mr. Arsh Chauhan, Advocate in CrMMO No. 999 of 2024.

For the Respondents: Mr. Tejasvi Sharma, Mr. Raj Pal Singh Thakur and Mr. H.S. Rawat, Additional Advocates General, assisted by DSP Vikram Chaudhary, CID Crime, Bharari, Shimla,

for R-No. 1 to 3. Mr. K.R. Kashyap and Mr. Raju Ram Rahi, Advocates, for R-No. 4 and 5 and Mr. Rohit Sharma, Deputy Advocate General, for respondent No. 1 to 3. Mr. K.R. Kashyap and Mr. Raju Ram Rahi, Advocates, for respondents No. 4 and 5 in CrMMO No.999 of 2024.

Virender Singh, Judge:- The order of mine shall dispose of the above titled petitions, which have been filed, under the provisions of Section 528 of the Bharatiya Nagarik Nyaya Sanhita (hereinafter referred to as 'BNSS'), with a prayer to quash FIR No. 124 of 2024, dated 21st September, 2024 (hereinafter referred to as the 'FIR in question'), registered under Section 3(1)(p) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'SC&ST Act'), with Police Station Sadar, Shimla, District Shimla, H.P., as well as, the proceedings resultant thereto, if any.

2. Petitioners, in both the petitions, are senior police officers, in the State of Himachal Pradesh.

3. It is the case of the petitioners that the FIR in question has been lodged, on the complaint of respondent No. 4-Meena Negi, which has been addressed to the Chief Secretary to the Government of Himachal Pradesh, as well as, to the Inspector General of Police, Southern Range, Shimla.

4. According to the petitioners, respondent No. 5 is the husband of respondent No. 4, who has been chargesheeted by the Department, for misconduct and departmental inquiry was initiated against him. The said inquiry was initiated on the ground that he had made five different complaints, against the senior officers of the police force, without any substance and following the proper chain of command.

5. Thereafter, as per the case of the petitioners, inquiry was conducted and respondent No. 5 was punished with compulsory retirement, vide order, dated 9th July, 2020. The appeal against the said order was rejected by the Appellate Authority, on 20th August, 2020. Thereafter, respondent No. 5 filed a Civil Writ

Petition, challenging the said order of the Appellate Authority. The said writ petition, however, was dismissed as withdrawn on 13th October, 2020. Subsequently, he has filed Revision Petition, before the second Appellate Authority, which was also dismissed. Thereafter, respondent No. 5 has filed CWP No. 1311 of 2021, which is still pending adjudication.

6. It is the further case of the petitioners that the FIR in question is clear abuse of the process of law, as, the same has been lodged by respondents No. 4 and 5, with ulterior motive to wreak vengeance against the petitioners and to tarnish their image.

7. It has been averred by the petitioners that the bare perusal of the FIR does not make out any offence and moreover, respondent No. 5 has been punished with compulsory retirement, after following due process of law and complying with the mandate of the Rules.

8. According to the petitioners, the FIR in question has been lodged after a gap of about four years, from the alleged cause of action, if any. In this regard, the petitioners have referred to the date, when the punishment of compulsory retirement was awarded to respondent No. 5.

9. The petitioners have also pleaded that the punishment, which has been awarded to respondent No. 5, has nothing to do with his community, as, the said punishment was awarded to respondent No. 5, on account of his professional misconduct.

10. Petitioner No. 2, in CrMMO No. 999 of 2024, has pleaded that he, at the relevant time, was posted as Superintendent of Police, Estate and Welfare at Police Headquarters, Shimla. According to him, the eviction notices were issued against respondent No. 5 to vacate the Government accommodation, in discharge of his official duties and there was no criminal intent to issue these notices, as, the same were issued, in pursuance of the transfer and the compulsory retirement orders, passed against respondent No. 5.

11. Petitioner No. 2, in CrMMO No. 999 of 2024, as per the stand taken in the petition, being the Superintendent of Police, Estate and Welfare, was duty bound to issue the said notices to respondent No. 5. The penalty, on account of rent for the Government accommodation was imposed upon respondent No. 5, which was calculated and levied, after adhering to the principles of law and the Rules and Regulations, governing the field.

12. Petitioner No. 1, in CrMMO No. 999 of 2024, has also pleaded that he has nothing to do with the compulsory retirement orders, passed against respondent No. 5, as, he was posted as Commandant, 1st HPAP Battalion, Junga, during the period from September, 2017 to January, 2018 and respondent No. 5 was under his general supervision and subordination.

13. In CrMMO No. 964 of 2024, the details of the minor and major penalties, imposed against respondent No. 5, have also been mentioned, which are reproduced, as under:

“(i) On 10.05.1993, Respondent No. 5 was awarded with punishment of permanent withheld of 04 years increments by SP Kinnaur due to his absenteeism.

(ii) On 09.09.1993, Respondent No. 5 was dismissed from service by SP Kinnaur and he rejoined department on 31.03.1994.

(iii) On 09.02.1995, Respondent No. 5 was awarded with 01 year forfeiture of service permanently by SP Kinnaur.

(iv) On 15.05.2002, Respondent No. 5 was awarded with the punishment of “Censure” by SP Kinnaur.

(v) On 20.06.2002, Respondent No. 5 was suspended and a regular DE was initiated against him due to his absenteeism from duty.

(vi) On 09.12.2002, Respondent No. 5 was awarded with the punishment of Censure by SP Kinnaur.

(vii) On 02.12.2005, Respondent No. 5 was awarded with the punishment of Censure by SP Kinnaur.

(viii) On 22.09.2006, Respondent No. 5 was awarded with the punishment of Censure by SP

Kinnaur.

(ix) On 28.06.2010, Respondent No. 5 was again suspended by SP Kinnaur for consumption of alcohol and a regular DE was initiated against him.

(x) On 27.10.2020, Respondent No. 5 was awarded with the punishment of forfeiture of 02 years increment permanently.

(xi) On 17.09.2011, Respondent No. 5 was awarded with the punishment of 15 days fatigue by SP Kinnaur.

(xii) On 07.07.2011, Respondent No. 5 was again suspended by SP Kinnaur u/s 89 HP Police Act and a regular DE was initiated against him.

(xiii) On 23.3.2014, Respondent No. 5 was also awarded with punishment of 04 years approved service by Co. Ist Bn., Junga and was reduced by DGP/HP for stoppage of 02 increments on temporary basis.

(xiv) On 04.02.2016, Respondent No. 5 was also awarded with the punishment of Censure by Co. Ist Bn., Junga.

(xv) On 27.08.2019, Respondent No. 5 was awarded with the punishment of forfeiture of 03 years approved service permanently by Co. Ist Bn. Junga.

(xvi) On 16.06.2020, Respondent No. 5 was awarded with the punishment of forfeiture of 01 years approved service permanently by Co. Ist Bn. Junga.

(xvii) On 16.06.2020, Respondent No. 5 was awarded with the punishment of forfeiture of 02 years approved service permanently by Co. Ist Bn. Junga.

(xviii) On 25.06.2020, Respondent No. 5 was awarded with the punishment of forfeiture of 05 years approved service permanently by Co. Ist Bn. Junga.” 14. It has further been pleaded on behalf of the petitioners, that

challenging the disciplinary action taken against respondent No. 5, he had filed CWPOA No. 7980 of 2008, before this Court, wherein, this Court, while upholding the findings of the disciplinary authority, vide judgment dated 2nd July, 2009, has held, as under:

“The petitioner is habitual absentee as per the record. He has remained absent for 45 days w.e.f. 5.11.1992 to 9.12.1992, 32 days w.e.f. 26.12.1992 to 27.1.1993, 10 days w.e.f. 25.4.1993 to 4.5.1993, 2 days i.e. 5.5.1993 and 6.5.1993, 3 days w.e.f. 24.5.1993 to 26.5.1993, 6 days w.e.f. 27.5.1993 to 1.6.1993, 1 day i.e. 4.6.1993 and 2 days i.e. 10.6.1993 and 11.6.1993. He is serving in a disciplined force. He has to maintain discipline while serving the police force. There is a procedure the manner in which the application is to be forwarded seeking casual/station leave or medical leave. This procedure has not been adopted by the petitioner. He remained absent without any cogent explanation with effect from 3.8.1992 to 25.8.1992. The punishment imposed upon the petitioner by the Disciplinary Authority is commensurate with the misconduct.

Accordingly, in view of the aforesaid reasoning, there is no merit in the petition and the same is dismissed. No costs."

15. It is the further case of the petitioners that they have no concern, whatsoever, with the proceedings, as mentioned in the FIR, which have been conducted against respondent No. 5, in their personal capacity, and, they have simply been dragged to defame and harass them.

16. In addition to this, the petitioners have also taken the plea that as per the provisions of Section 102 of the H.P. Police Act, 2007, the action of petitioner No. 1 in CrMMO No. 964 of 2024, taking action against respondent No. 5, is in accordance with law and such actions, so taken in good faith, are protected under the provisions, as referred to above.

17. On the basis of the above facts, a prayer has been made to allow the petitions, as prayed for.

18. When put to notice, respondents No. 1 to 3 have filed the reply, in which, they have asserted that FIR No. 124 of 2024, was registered at the instance of respondent No. 4, against ten persons, including the petitioners, in both the petitions. Initially, the investigation of the case was done by IO of Police Station Sadar Shimla, whereas, later on, the same was transferred to State CID.

19. As per the stand of respondents No. 1 to 3, as taken in the reply, the State CID has conducted the investigation and during the investigation,

allegations, as made in the FIR, could not be proved. As such, cancellation has been prepared on 23rd October, 2024 and after completing the legal procedure, the cancellation report will be submitted to District Level Vigilance and Monitoring Committee.

20. It has been admitted that respondent No. 5, Ex HC Dharam Sukh, as per the record, was habitual of making false complaints against senior police officers and of absenteeism from duty, for which, he has been penalized with minor and major penalties, since 1993.

21. I have heard learned counsel for the parties and perused the record carefully.

22. In this case, on the complaint of respondent No 4-Meena Negi, police registered the FIR in question, under the provisions of Section 3(1)(p) of the SC&ST Act. The contents of the complaint, made by respondent No. 4- Meena Negi, are reproduced, as under:

"With due respect, I, Smt. Meena Negi, wife of Shri Dharma Sukh Negi, would like to bring to your attention that high-ranking police officials have misused their authority and, out of a sense of revenge, have conspired against me and my family, belonging to a Scheduled Tribe community. They have fabricated false, baseless, and fraudulent documents, conducting a fake departmental inquiry. Despite having eight years of service left, my husband was humiliated & forcibly dismissed from service on 09-07-2020 by Commandant Smt. Anjum Ara Khan of the First Armed Battalion, without giving him a hearing, in connivance with senior police headquarters officials. My husband was also forcibly evicted from the police headquarters-allocated government accommodation, and loan amount of Rs. 1,43,424 was wrongfully

ordered for recovery without any calculation by Superintendent of Police (Estate & Welfare) Bhagat Singh Thakur, and my husband's gratuity, DCRG, and other retirement benefits have been withheld since 2020. Additionally, numerous notices from DGP and SP Welfare Bhagat Singh have been issued to vacate the government accommodation, harassing our family both at the police residential colony in Bharari and our ancestral village Ramni in District Kinnaur, bringing immense shame upon us.

Sir, in November 2023, I had submitted an application to the Honorable Judge, Honorable Chief Minister, Government of Himachal Pradesh, Chief Secretary, Home Secretary, and Superintendent of Police, Shimla, explaining in detail the atrocities and inhumane treatment inflicted upon us, particularly regarding the racial/Caste discrimination by senior police officers. Despite this, no case has yet been registered under the SC&ST Act. My family, including my husband and children, has been subjected to social, economic, and mental distress by these IPS officers since 2017-18 during the previous government.

Therefore, I humbly request that an FIR be registered under the provisions of the SC&ST Act, 1989, against the following individuals : DGP HP Shri

Sanjay Kundu, Himanshu Mishra, Arvind Sharda, Diwakar Datt Sharma, Smt, Shalini Agnihotri, Anju Ara Khan, Bhagat Singh Thakur, Pankaj Sharma, Smt. Meenakshi, and DSP Baldev Sharma. If this is not done, I will be compelled to file a case under Section 4 of the same Act against all the named officials and the Head of Government to whom this letter is addressed.

The victim's family has been pushed to the brink of starvation. I request an immediate and impartial investigation, and the victim and her family be compensated fairly for the suffering caused."

23. On the basis of the said complaint, the police has registered the case and the criminal machinery swung into motion.

24. The Hon'ble Supreme Court, in Gulam Mustafa versus State of Karnataka and another, reported in 2023 SCC OnLine SC 603, has cautioned the authorities to be vigilant before invoking any provision of stringent statute, like SC&ST Act, which, according to the Hon'ble Supreme Court, imposes serious penal consequences on the concerned accused. In this regard, it would be apt to rely upon paras 37 and 38 of the judgment, which are reproduced, as under: "37. The Court would also note that even if the allegations are taken to be true on their face value, it is not discernible that any offence can be said to have been made out under the SC/ ST Act against the appellant. The complaint and FIR are frivolous, vexatious and oppressive.

38. This Court would indicate that the officers, who institute an FIR, based on any complaint, are duty-bound to be vigilant before invoking any provision of a very stringent statute, like the SC/ST Act, which imposes serious penal consequences on the concerned accused. The officer has to be satisfied that the provisions he seeks to invoke prima facie apply to the case at hand. We clarify that our remarks, in no manner, are to dilute the applicability of special/stringent statutes, but only to remind the police not to mechanically apply the law, dehors reference to the factual position."

25. In this case, after the investigation, the police has prepared the cancellation report. In such situation, the next material question, which arises for consideration, before this Court is as to whether the FIR in question can still be quashed.

26. As per the stand taken by the police, cancellation report has been prepared and will be produced before the District Level Vigilance and Monitoring Committee, constituted as per Section 17 of the SC&ST Act. The said process will take sufficient long time. The petitioners cannot be compelled to suffer the sting of the registration of the FIR, that too, under such a stringent statute, for the acts, which have been done by them, in discharge of their official duties, that too, when the allegations, levelled against them, could not be established, during the investigation.

27. In the status report, which has been filed on 4th December, 2024, in CrMMO No. 964 of 2024, the IO has specifically mentioned that husband of complainant-Meena Negi, i.e. respondent No. 5, met him outside the Court and pointing his finger towards the IO, uttered the words ‘dekhta hu tujhe main 16-12- 2024 ko DSP se Additional SP kaise bnata hu’. This is sufficient to demonstrate that the FIR in question has been lodged, by respondents No. 4 and 5, in order to harass/drag the senior police officers of the State, in an uncalled for litigation. 28. While exercising the power under Section 528 of the BNSS, this Court has to prevent the abuse of the process of law. If the facts and circumstances of the present case are seen, in the light of the decision of the Hon’ble Supreme Court in State of Karnataka versus L. Muniswamy and others, reported in AIR 1977 Supreme Court 1489, then, even after preparation of the cancellation report, the FIR is liable to be quashed. Relevant paras-7 and 8 of the judgment, are reproduced, as under:

“7. The second limb of Mr. Mookerjee's argument is that in any event the High Court could not take upon itself the task of assessing or appreciating the weight of material on the record in order to find whether any charges could be legitimately framed against the respondents. So long as there is some material on the record to connect the accused with the crime, says the learned counsel, the case must go on and the High Court has no jurisdiction. to put a precipitate or premature end to the proceedings on the belief that the prosecution is not likely to succeed. This, in our opinion, is too broad a proposition to accept. Section 227 of the Code of Criminal Procedure, 2 of 1974, provides that:

"If, upon consideration of the record of the case and the documents submitted there- with, and after hearing the submissions of the accused and the prosecution in this be- half, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

This section is contained in Chapter XVIII called "Trial Before a Court of Sessions". It is clear from the provision that the Sessions Court has the power to discharge an accused if after perusing the record and hearing the parties he comes to the conclusion, for reasons to be recorded, that there is not sufficient ground for proceeding against the accused. The object of the provision which requires the Sessions Judge to record his reasons is to enable the superior court to examine the correctness of the reasons for which the Sessions Judge has held that there is of is not sufficient ground for proceeding against the accused. The High Court therefore is entitled to go into the reasons given by the Sessions Judge in support of his order and to

determine for itself whether the order is justified by the facts and circumstances of the case. Section 482 of the New Code, which corresponds to S. 561-A of the Code of 1898, provides that:

"Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent

abuse of the process of any Court or otherwise to secure the ends of justice."

In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the, ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.

8. Let us then turn to the facts of the case to see, whether the High Court was justified in holding that the proceedings against the respondents ought to be quashed in order to prevent abuse of the process of the court and in order to secure the ends of justice. We asked the State counsel time and again to point out any data or material on the basis of which a reasonable likelihood of the respondents being convicted of any offence in connection with the attempted murder of the complainant could be predicated. A few bits here and a few bits there on which the prosecution proposes to rely are woefully inadequate for connecting the respondents with the crime, howsoever, skilfully one may attempt to weave those bits into a presentable whole. There is no material on the record on which any tribunal could reasonably convict the respondents for any offence connected with the assault on the complainant. It is undisputed that the respondents were nowhere near the scene of offence at the time of the assault. What is alleged against them is, that they had conspired to commit that assault. This, we think, is one of those cases in which a charge of conspiracy is hit upon for the mere reason that evidence of direct involvement of the accused is lacking. We have been taken through the statements recorded by the police during the course of investigation and the other material. The worst that can be said against the respondents on the basis thereof is that they used to meet one another frequently after the dismissal of accused No. 1 and prior to the commission of the assault on the complainant. Why they met, what they said, and whether they held any deliberations at all, are matters on which no witness has said a word. In the circumstances, it would be a sheer waste of public time and money to permit the proceedings to continue against the respondents. The High Court was therefore justified in holding that for meeting the ends of justice the proceedings against the respondents ought to be quashed."

(self emphasis supplied)

29. In another case, titled as Manik Taneja & Anr. versus State of Karnataka & Anr., reported in (2015) 1 SCR 156, the Hon'ble Supreme Court has re-iterated that when no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may quash the proceedings, even though, it may be at a preliminary stage. Relevant para-9 of the judgment, is reproduced, as under:

"9. 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 the prosecution to continue. Where, in the opinion of the Court, the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may quash the proceeding even though it may be at a preliminary stage."

30. In the present case, nothing was found by the investigating agency, during the investigation, as per the allegations levelled in the complaint. Moreover, on the bare reading of those allegations, in the considered opinion of this Court, the complainant could not connect the petitioners with the alleged crime. Even otherwise, on the basis of the vague allegations, if the proceedings are permitted to be continued, may it be the cancellation proceedings, then, the same would be nothing, but, the abuse of the process of the law. The bare perusal of the complaint does not make out a case that the departmental proceedings, which were initiated, culminated and upheld by the High Court, were initiated against respondent No. 5, only on the ground that respondents No. 4 and 5 belong to a community, which falls in the Scheduled Tribes category. As such, their bald assertion, regarding this fact, is too short to take any action against the petitioners.

31. Although, after investigating the matter, the police has decided to file the cancellation report, in this case, however, in the peculiar facts and circumstances of the present case, the petitioners cannot be left in the lurch to wait for the decision of the authorities on the cancellation report. The petitioners are entitled to have a sigh of relief, as, even during the pendency of the cancellation report, indirectly, they have to suffer the sting of registration of the FIR against them.

32. Considering all these facts, in the considered opinion of this Court, the petitioners are able to make out a case for quashing of the FIR in question.

33. Consequently, the petitions are allowed and the FIR in question, so also the resultant proceedings, if any, are quashed.

34. Pending miscellaneous applications, if any, are also disposed of accordingly.