



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No: 789 of 2026

Reserved on: 28.07.2026

Date of Decision: 04.08.2026

Naresh		...Petitioner
	Versus	
State of H.P. and Anr.		...Respondents

Coram
Hon’ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?¹ Yes

For the Petitioner	:	Mr Surinder Saklani, Advocate.
For Respondent No.1/State	:	Mr Jitender K. Sharma, Additional Advocate General.
For Respondent No.2	:	Nemo

Rakesh Kainthla, Judge

The petitioner has filed the present petition for quashing of private complaint No. 59 of 2023 titled Surender Kumar versus Naresh pending before the learned Judicial Magistrate First Class, Court No. 8, Shimla, H.P. (learned Trial Court). *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).*

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2. Briefly stated, the facts giving rise to the present petition are that the respondent no. 2/complainant filed a complaint against the petitioner/accused for the commission of offences punishable under Sections 323 and 341 of the IPC. It was asserted that the accused was constructing a steel structure on 20.08.2023. The complainant objected to it and requested the accused not to carry out any construction. The complainant and the accused had purchased the flats from Vishal Chauhan, who was called to the spot. He clarified that no one was authorised to construct any stand in front of any flat and if any structure was to be raised, it was to be raised on the side of the building. He also earmarked the area for constructing the stand. The accused came to the spot on 27.08.2023 at about 3-3:30 p.m. with 6-7 persons and threatened to construct the stand. The complainant objected, and the accused slapped the complainant. The complainant's son intervened, and the accused also caused him injuries. The complainant tried to go to his home, but the accused restrained him from proceeding further. The complainant made a complaint to the police, and the police filed a Kalandra under Section 107/150 of the Cr.P.C. Hence, a complaint was filed before the learned Trial Court for taking action against the accused.

3. Learned Trial Court recorded the preliminary evidence and found sufficient reasons to summon the accused vide order dated 19.02.2024. The accused appeared before the Court on 05.10.2024 and furnished the bail bonds.

4. Being aggrieved by the filing of the complaint and summoning order passed by the Court, the accused has filed the present petition for quashing of the complaint, summoning order and consequential proceedings. It has been asserted that a kalandra was prepared and was sent to the Court of the learned Sub-Divisional Magistrate (Urban), who had issued the notices to the accused. Civil litigation is going on between the parties. A false complaint was filed to compel the accused to compromise the matter. The continuation of the proceedings would amount to an abuse of the process of the Court. Therefore, it was prayed that the present petition be allowed and the complaint and consequential proceedings arising out of it be quashed.

5. I have heard Mr Surinder Saklani, learned counsel for the petitioner and Mr Jitender Sharma, learned Additional Advocate General for the respondent/State.

6. Mr Surinder Saklani, learned counsel for the petitioner, submitted that the matter was reported to the police and the police filed a kalandra before the learned Sub-Divisional Magistrate. The complainant could not have filed a complaint based on the same facts. The continuation of the proceedings before the learned Trial Court amounts to double jeopardy. Civil litigations are pending between the parties, and the complainant had filed a false complaint against the accused to compel him to settle the matter. The continuation of the proceedings would amount to an abuse of the process of the Court. Therefore, he prayed that the present petition be allowed and the summoning order, complaint and consequential proceedings arising out of it be quashed.

7. Mr Jitender Sharma, learned Additional Advocate General for the respondent/State submitted that the dispute is between the private parties and the State has no submissions to make.

8. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

9. The law relating to quashing of criminal cases was explained by the Hon'ble Supreme Court in *B.N. John v. State of U.P.*, 2025 SCC OnLine SC 7 as under: -

“7. As far as the quashing of criminal cases is concerned, it is now more or less well settled as regards the principles to be applied by the court. In this regard, one may refer to the decision of this Court in *State of Haryana v. Ch. Bhajan Lal*, 1992 Supp (1) SCC 335, wherein this Court has summarised some of the principles under which FIR/complaints/criminal cases could be quashed in the following words:

“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 channelised 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 based on 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 a private and personal grudge.” *(emphasis added)*

8. Of the aforesaid criteria, clause nos. (1), (4) and (6) would be of relevance to us in this case.

In clause (1), it has been mentioned that 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, then the FIR or the complaint can be quashed.

As per clause (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 dated by the Magistrate as contemplated under Section 155 (2) of the CrPC, and in such a situation, the FIR can be quashed.

Similarly, as provided under clause (6), if there is an express legal bar engrafted in any of the provisions of the CrPC or the concerned Act under which the criminal proceedings are instituted, such proceedings can be quashed.”

10. This position was reiterated in *Ajay Malik v. State of Uttarakhand*, 2025 SCC OnLine SC 185, wherein it was observed:

“8. It is well established that a High Court, in exercising its extraordinary powers under Section 482 of the CrPC, may issue orders to prevent the abuse of court processes or to secure the ends of justice. These inherent powers are neither controlled nor limited by any other statutory provision. However, given the broad and profound nature of this authority, the High Court must exercise it sparingly. The conditions for invoking such powers are embedded within Section 482 of the CrPC itself, allowing the High Court to act only in cases of clear abuse of process or where intervention is essential to uphold the ends of justice.

9. It is in this backdrop that this Court, over the course of several decades, has laid down the principles and guidelines that High Courts must follow before quashing criminal proceedings at the threshold, thereby pre-empting the Prosecution from building its case before the Trial Court. The grounds for quashing, *inter alia*, contemplate the following situations : (i) the criminal complaint has been filed with *mala fides*; (ii) the FIR represents an abuse of the

legal process; (iii) no *prima facie* offence is made out; (iv) the dispute is civil in nature; (v.) the complaint contains vague and omnibus allegations; and (vi) the parties are willing to settle and compound the dispute amicably (*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335).

11. A similar view was taken in *Rajendra Bihari Lal v. State of U.P.*, 2025 SCC OnLine SC 2265, wherein it was observed:

“70. The aforesaid decisions of this Court make it clear that where the High Court is satisfied that the process of any court is being abused or likely to be abused or that the ends of justice would not be secured, it is not only empowered but also obligated under the law to exercise its inherent powers. The provision does not confer any new power on the High Court but rather saves the power which the High Court already possesses, from before the enactment of the legislation, by reason of its very existence. In exercise of its power, it would be legitimate for the High Court to quash any criminal proceedings if the High Court finds that the initiation or continuation of it may lead to abuse of process of court, and quashing of the proceedings would serve the ends of justice.”

12. The present petition is to be decided as per the parameters laid down by the Hon’ble Supreme Court.

13. It was submitted that the complaint was made to the police and the police filed a kalandara. The complainant could not have filed a complaint based on the same facts. The continuation of the proceedings before the learned Trial Court amounts to double jeopardy. This submission cannot be accepted. It was laid down more than 100 years ago in *Muthia Moopan and Ors.*

(09.09.1911- MADHC): MANU/TN/0278/1911 that the security proceedings contemplate the discharge as opposed to acquittal. No charge is to be framed. Hence, the provision of Section 495 of Cr.P.C. 1888 (corresponding to Section 300 of 1973) does not apply to security proceedings. It was observed: -

“Section 495 has no application to the case. It applies only where the proceedings could end in an acquittal or discharge of the accused. A proceeding under Section 107 of the Criminal Procedure Code does not terminate in either of these ways. No doubt Section 117 enacts that the enquiry in such cases shall be made as nearly as may be practicable in the manner prescribed for conducting trials and recording evidence in summons cases. But the final order to be passed is expressly provided for in Section 119, Criminal Procedure Code, which lays down that "If, on an enquiry under Section 117, it is not proved that it is necessary for keeping the peace... that the person in respect of whom the enquiry is made, should execute a bond, the Magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the enquiry, shall release him or if such person is not in custody, shall discharge him." Section 118, Criminal Procedure Code, shows that if the finding is against the accused, no order is to be passed convicting him. The order should be one directing him to execute a bond. If, on the other hand, the finding is in his favour, Section 119 shows an entry is to be made on the record that it is not necessary that he should execute a bond and if he is in custody he should be released; if he is not in custody he should be discharged. In *Velu Tayi Ammal v. Chidambaravelu Pillai I.L.R., (1910) Mad., 85*, Miller, J., points out that the expression discharged in Section 119, Criminal Procedure Code, means merely discharged from custody and is not used in the technical sense of discharged (as opposed to acquitted) from an offence as used in Section 253, Criminal

Procedure Code. No charge has to be framed against the accused in security proceedings which commence with the making of an order under Section 112, Criminal Procedure Code, by the Magistrate "setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required." We have not here, therefore, a case where the framing of a charge is contemplated at all or as the result of the proceedings an order either of discharge or acquittal is to be passed against anyone. It may be noted that even the word "accused" is not used by the legislature with reference to security proceedings, though the word is a convenient one and may not inappropriately be made use of for some purposes, but as pointed out by Miller, J., the use of the word requires caution. That learned Judge held in *Velu Tayi Ammal v. Chidambaravelu Pillai, I.L.R., (1910) Mad., 85* that Section 437, Criminal Procedure Code, which empowers the High Court or a Sessions Judge to direct a further enquiry to be made where an accused person has been discharged, does not apply to orders passed under the security sections. The same view was taken by the Calcutta High Court in *Queen-Empress v. Iman Mondal, I.L.R., (1900) Calc., 662.*"

14. This question was also considered by *Emperor vs. Bhagwat Singh, AIR 1926 All 403* and it was held that a person bound over under Section 107 is not convicted of any offence and may be retried. It was observed: -

"The question is whether the appellate court has the power under section 423 of the Code of Criminal Procedure to order a re-trial. The authority given to an appellate court is contained in clauses (c) and (d). In an appeal from an order, the appellate court may alter or reverse such order and may make any amendment or any consequential or incidental order that may be just or proper. Under clause (b), in an appeal from a conviction, the appellate court is specifically

given the power of ordering a retrial. The distinction exists for a very obvious reason. Under section 403, a person once convicted or acquitted cannot be tried for the same offence, and in an appeal from a conviction, if the conviction is reversed, the appellant may claim that he has been acquitted and he would not be liable to re-trial for the same offence. To obviate this difficulty, power has to be given to the appellate court specifically to order a re-trial. This difficulty will not arise in proceedings taken under section 107 of the Code of Criminal Procedure. A person bound over under the terms of that section is not convicted of any offence and may be re-tried in pursuance of the same order passed under section 107. The order for re-trial is, in our opinion, an incidental order. All that the Sessions Judge has done is to reverse the order binding over the applicants and then to direct that proceedings subsequent to the stage of the issue of a notice under section 107 be all cancelled and that the Magistrate do proceed from the stage of the issue of notice.”

15. A similar view was taken in *Narinder Singh v. Shiv*

Kumar, 2023 SCC OnLine J&K 791 wherein it was held:

10. From a perusal of the aforesaid provision, it is clear that no one can be tried and convicted for the same offence or even for a different offence, but on the same facts. In the instant case, even if it is assumed that the facts narrated in the impugned complaint and the facts narrated in the proceedings under Sections 107/117 of Cr. P.C. are similar, still then, in the proceedings under Sections 107/117 of Cr. P.C., the petitioner is not to be tried and convicted for any offence. At best, he can be asked by the Magistrate to execute a bond for keeping peace and good behaviour. It is only in the proceedings initiated on the basis of a criminal complaint that the petitioner can be tried and convicted of some offence. Therefore, the provisions of Section 300 of Cr. P.C. are not attracted to the facts of the instant case. The

argument of learned counsel for the petitioner, as such, is without any merit.

16. Therefore, the plea taken by the petitioner/accused that the filing of the complaint before the learned Trial Court after initiation of the criminal proceedings before the learned SDM amounts to double jeopardy is not acceptable.

17. The copies of the order sheets show that the summoning order was passed on 19.02.2024. The petitioner had appeared before the learned Trial Court on 05.10.2024 and had furnished the bail bonds. However, the present petition was filed before the Court on 21.07.2026 after the lapse of more than 2 years from the summoning order. The inherent jurisdiction is discretionary and cannot be exercised in case of inordinate delay. It was laid down by the Delhi High Court in *Ajit Kumar Gola v. State (NCT of Delhi)*, 2026 SCC OnLine Del 1398, that ordinarily a petition under Section 482 of CrPC should be filed within 90 days and the delay beyond 90 days should be satisfactorily explained. It was observed:

“12. In *Bata v. Anama Behera*, 1989 SCC OnLine Ori 325: 1990 Cri LJ 1110, the learned Single Judge of the Orissa High Court observed as under:

“Though for filing an application under Section 482 there is no limitation, the application should be filed within a

reasonable time, so that the progress of the case is not disturbed at a belated stage. A revision petition challenging an order can be filed within 90 days from the date of the order. Similarly, a period of 90 days, which is at par with a revision petition, should be treated as a reasonable time for filing an application under Section 482, and if it is filed beyond the period of 90 days, the applicant would have to explain the cause of the delay.”

13. Similarly in **Gopal Chauhan v. Smt Satya**, 1978 SCC OnLine HP 33: 1979 Cri LJ 446, it was observed that a petition under Section 482 CrPC and Article 227 of the Constitution of India filed after expiry of 3 years from the date of summoning ought not to be entertained when the case is fixed for the stage of evidence and that too, when the petitioner has approached the Revisionist Court.

14. Thus, although the question of inordinate delay and laches has not been dealt with in many cases but the fact remains that a party who invokes the jurisdiction of the High Court for quashing of FIR and the consequent proceedings by embarking on to show that the ingredients of Section 409 or 420 IPC are not made out, is not only required to meet the test of expeditious dispatch of approaching to the Court but he should also be able to show that the facts are so glaring that it calls for interference of the High Court rather than raising the disputed questions of fact. In the present case, the FIR was admittedly registered in the year 1999, and a charge sheet had also been filed in the same year. Therefore, the petitioner was aware of what the accusations against him were when he appeared before the Court for the first time in 1999, as a complete set of the charge sheet must have been supplied to him. If at all, the petitioner felt that there was a case for quashing of the FIR, he ought to have approached the Court at the earliest possible stage. I agree with the observation made by the Orissa High Court that if a revision against an order of summoning could be filed within a period of 90 days then ordinarily a period of 90 days should have been sufficient to invoke the jurisdiction of High Court under Section 482

CrPC Admittedly, this has not been done and if the period is calculated from 1999, the present petition has been filed after more than 11 years and, therefore, there was inordinate delay and laches on the part of the petitioner for which not even an iota of Explanation is forthcoming in the petition.

15. Even if, the contention of the learned counsel for the petitioner that the cause of action for filing the petition accrued to the petitioner only after 09.05.2009 when the charges against him under Section 409 and 420 IPC were framed, is taken to be correct even then from the date of framing of the charge, there has been a lapse of almost two years in invoking the jurisdiction of this Court. As I have observed hereinabove that a revision against an order ought to be filed within a period of 90 days and the said period has been held by Orissa High Court to be reasonable and sufficient to invoke the revisionary power of a Court, then ordinarily the said period can also be said to be reasonable in normal circumstances while preferring a petition under Section 482 CrPC while as in the instant case, there is a lapse of almost two years without there being even an iota of averment in the petition as to what the petitioner was doing during these two years.”

18. In the present case, the petitioner has failed to provide any explanation for the delay, and the inherent jurisdiction cannot be exercised at his instance.

19. It was submitted that a civil suit is pending between the parties and a dispute of civil nature is being given a criminal colour. This submission cannot be accepted. The allegations in the complaint show that the accused came with 4-5 persons and gave beatings to the complainant and his son. They also restrained

them from proceeding towards their home. These allegations *prima facie* show the commission of offences punishable under Sections 323 and 341 of the IPC. Merely because a civil suit is pending between the parties does not mean that no offence was committed in the present case. Hence, the pendency of the civil suit will not help the petitioner.

20. It is undisputed that the matter is pending before the Learned Trial Court. It was laid down by the Hon'ble Supreme Court in *Iqbal v. State of U.P.*, (2023) 8 SCC 734: 2023 SCC OnLine SC 949 that when the matter is pending before the learned Trial Court, it should be left to appreciate it. It was observed:

“At the same time, we also take notice of the fact that the investigation has been completed and the charge sheet is ready to be filed. Although the allegations levelled in the FIR do not inspire any confidence, particularly in the absence of any specific date, time, etc. of the alleged offences, we are of the view that the appellants should prefer a discharge application before the trial court under Section 227 of the Code of Criminal Procedure (CrPC). We say so because even according to the State, the investigation is over and the charge sheet is ready to be filed before the competent court. In such circumstances, the trial court should be allowed to look into the materials which the investigating officer might have collected, forming part of the charge sheet. If any such discharge application is filed, the trial court shall look into the materials and take a call whether any discharge case is made out or not.”

21. No other point was urged.

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

23. The observations made hereinbefore shall remain confined to the disposal of the petition and will have no bearing whatsoever on the merits of the case.

(Rakesh Kainthla)
Judge

4th August, 2026
(Nikita)