

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Cr.MMO No.424 of 2018 with
Cr.MMO Nos.362, 386 & 359 of 2018**

Judgment reserved on: 30.03.2026

Date of Decision: 18.04.2026

1. Cr.MMO No.424 of 2018

Kailash ChandPetitioner

Versus

State of H.P & another ... Respondents

2. Cr.MMO No.362 of 2018

Baljinder Pal SinghPetitioner

Versus

State of H.P & another ... Respondents

3. Cr.MMO No.386 of 2018

Manoj Kumar BansalPetitioner

Versus

State of H.P & another ... Respondents

4. Cr.MMO No.359 of 2018

Ankur SharmaPetitioner

Versus

Liaquat Ali Khan ... Respondent

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹ Yes.

For the Petitioner(s): Mr. Rahul Gathania, Advocate, for the petitioner(s) in Cr.MMO Nos. 424, 359 and 386 of 2018.

Mr. Vijay Arora, Senior Advocate with Mr. Hitansh Raj and Mr. Gaurav Kumar, Advocates for the petitioner in Cr.MMO No.362 of 2018.

¹ Whether the reporters of the local papers may be allowed to see the judgment?

For the Respondents: Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocate Generals with Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General, for the respondent/State, in all the petitions, except Cr.MMO No.359 of 2018.

Mr. Sumit Raj Sharma, Advocate, for respondent No.2 in Cr.MMO Nos. 424, 362 and 386 of 2018 and for sole respondent in Cr.MMO No.359 of 2018.

Sandeep Sharma, Judge:

Since common questions of law and facts are involved in the above-captioned petitions and the petitioners herein are aggrieved of order dated 02.07.2018, passed by learned Sessions Judge, Nahan, District Sirmour, Himachal Pradesh, in case No. 3-Cr.R/10 of 2016, affirming the order dated 22.12.2014, passed by learned Judicial Magistrate, First Class, Nahan, Himachal Pradesh, thereby issuing process against the petitioners for the commission of offences punishable under Sections 409, 465, 467, 468, 471 read with Section 120-B of IPC, all the petitions were heard together and now same are being disposed of by this common order.

2. For having bird's eye view, the quintessential facts, which are common in all the cases, save and except the official positions held by the petitioners in State Bank of India and New India Assurance Company, are that respondent No.2, Sh. Liaquat Ali Khan and Shri Kapil Chaudhary (later on substituted by Ahsan Ullah), were partners of the firm M/s Paradise Packers. The said firm had availed

Cash Credit (Hypothecation) and Term Loan from the State Bank of India, Branch Office, Kala Amb, and had mortgaged its property with the aforesaid bank as Security. Subsequently, Sh. Kpil Choudhary retired from the company and in his place, Sh. Ahsan Ullah was inducted as partner. On the request of respondent No.2, Sh. Liaquat Ali Khan and above named Ahsan Ullah, the credit facilities were renewed by the bank. However, partners of the firm, as named hereinabove, failed to maintain financial discipline, as a result whereof, the loan account became irregular and was ultimately declared as Non-Performing Asset (NPA). Consequently, the bank issued notice dated 26.11.2010 under Section 13(2) of the SARFAESI Act and thereafter took physical possession of the secured assets of the Company. Since respondent No.2 and another partner of Company failed to liquidate the outstanding liability, bank filed O.A No.466 of 2011(Annexure P-11) before the Debts Recovery Tribunal-1, Chandigarh, for recovery of the outstanding amount.

3. Vide order dated 15.07.2017, afore Tribunal allowed the application of the bank and held respondent No.2 alongwith another partner, jointly and severally liable to pay a total sum of Rs.28,80,998/- to the bank alongwith costs and current as well as future Interest @15% and @13.75% per annum, respectively with monthly rests on the Term Loan and Cash Credit Account respectively, from the date of filing of the OA, i.e., 29.07.2011 till the date of realization.

4. Pleadings adduced on record by the parties reveal that aforesaid order has attained finality, because, no appeal, whatsoever was ever filed by respondent No.2 or his partner in the superior Court of law. Before aforesaid order passed by Debts Recovery Tribunal, Chandigarh could be enforced, respondent No.2 filed an application under S.156(3) of Cr.P.C. before the learned Judicial Magistrate, First Class, Nahan, District Sirmour, Himachal Pradesh, seeking registration of an FIR against the petitioners, averring therein that he is one of the partners of M/s Paradise Packers, Village Rampur Jatta, Nahan road, P.O. Kala Amb, District Sirmour, Himachal Pradesh, which was established for the purpose of manufacture/production of all types adhesive tapes and the said unit was financed by the State bank of India, Branch Kala Amb, District Sirmour, Himachal Pradesh by providing a term loan of Rs. 10 Lakhs and also cash credit limit of Rs. 17 lakhs. Respondent No.2 further alleged that the Industrial Unit was running successfully and some discrepancies were found in the loan account by the complainant, which were brought to the notice of the then Branch Manager Sh. Kailash Chand and the Field Officer Sh. Ankur (petitioners herein), who informed that as per bank norms, the industrial unit including machinery and raw material, was required to be insured and that the bank had already obtained such insurance. Respondent No.2 further alleged that no signatures of the complainant or his partner were obtained on the

proposal forms for such insurance, but yet petitioners, namely Sh. Kailash Chand and Sh. Ankur along with agent of the New India Assurance Company, namely Shri Baljinder Singh, forged the writings and signatures on the proposal forms. He further alleged that no survey was ever conducted by the Insurance company before insuring the industrial unit and bank had got insurance policy for all types of cardboard and other raw material used for manufacture of finished/semi-finished cardboard boxes, whereas industrial units was only manufacturing all types of adhesive tapes and not cardboards as was mentioned in the policy. Respondent No.2 further alleged that thereafter he wrote a letter dated 26.5.2008 apprising the bank officials regarding undervaluation as well as also wrong mentioning of the production process in the policy and asked the bank to get the policy corrected, on which petitioners Sh. Kailash Chand and Shri Ankur assured that necessary correction shall be got done, but there was no renewal on the expiry of the policy despite his requests to get the policy renewed for the correct amount and the for correct purposes after proper survey. Respondent No.2 further alleged that on seeing the callous attitude of Sh. Kailash Chand and Field Officer Shri Ankur, who at the relevant time were working as Manager and Field Officer, respectively, in the bank, he himself got next insurance policy done from the Oriental Insurance Company, Chandigarh on 4.8.2009 with correct valuation and the purpose of the industrial unit

for manufacturing of adhesive tapes, which was effective from 4.8.2009 till 3.8.2010. The amount of insurance was Rs. 51,25,000/-, out of which Rs. 14 Lakh were against machinery, Rs. 25 Lakh for the raw material Rs. 12 Lakh for the building and Rs.25,000/- for furniture and fixtures. Respondent No.2 apprised the Manager of the bank i.e. petitioner namely Sh. Kailash Chand regarding comprehensive policy obtained by him with a further instructions to the bank officials not to renew the insurance taken by them in past. Respondent No.2 further alleged that surprisingly again the amount from the account of the firm was debited towards insurance purchased by petitioners Shri Kailash Chand and Shri Ankur from Sh. Baljinder Singh during the subsistence of the policy, which was obtained by him from Oriental Insurance Company. He alleged that on inquiry, he was informed that inadvertently the bank officials had taken the Insurance from New India Assurance Company Limited, which was effective from 12.4.2010 to midnight of 11.4.2011. He alleged that petitioner Shri Kailash Chand, Manager of the Bank, was thereafter asked by him to provide the copy of new insurance policy, but same was not supplied to him, rather he was asked by above named Sh. Kailash Chand and Ankur Sharma to furnish the details of breakup of the insurance cover, which were sent vide letter dated 24.9.2010 through speed post. Respondent No.2 alleged that no inspection by the insurance company before issuing insurance policy was conducted at the time of

first insurance as well as the second insurance. He further alleged that no form or any other documents were got filled and signed from him or his partner for the second policy and such insurance policy was obtained by the petitioners Kailash Chand and Ankur by forging his signatures as well as of his partner that too despite having noticed that unit has already been got insured by the complainant from other insurance company i.e. Oriental Insurance Company Limited and as such, petitioners have committed breach of trust with respect to loan amount by withdrawing and transferring the amount wrongly and illegally and purchased the insurance from 12.4.2010 to 11.4.2011 through commission agent Shri Baljinder Singh i.e. petitioner in Cr.MMO No. 362 of 2018, for causing wrongful gain to him as well to themselves. He further alleged that on 16.10.2010, he came to know that due to rains, the industrial unit suffered flooding, resulting in damage to the building, machinery and raw material and further the iron grills on the window were found broken and burglary had taken place in the industrial premises, which was reported to the police on 16.10.2010 and FIR was duly registered by the police. On 18.10.2010, respondent No.2 informed the bank officials regarding the theft/ burglary and the damage suffered by him and asked them to process the insurance claim from the insurance company for getting the premises inspected for assessing the loss in order to raise insurance claim. It is contended that direct communication to

insurance company was not possible as he was not having the date of policy, which was never supplied to him as the policy was retained by the bank itself. He alleged that despite repeated request, policy was not handed over to him by petitioner Manoj Kumar Bansal, Manager of the bank. He alleged that on 19.10.2010, he wrote a letter to the Superintendent of Police, Nahan and later on he was given the copy of insurance policy and then he came to know that goods insured in the insurance policy were cardboard boxes manufacturing and the factory was depicted as a cardboard manufacturing unit and further the policy was not a comprehensive policy, which could cover theft. Though, insurance company was informed, but no surveyor was deputed by the insurance company to evaluate the loss suffered by him and inaction of the bank and insurance company was on account of manipulation by bank Manager Sh. Kailash Chand and Field Officer, Sh. Ankur, who in criminal conspiracy with the insurance agent Sh. Baljinder Singh have committed offence punishable under Sections 409, 465, 467, 468, 471 read with section 120-B of Indian Penal Code.

5. Learned Judicial Magistrate, First Class, Nahan, taking note of afore complaint, sought report from the police station concerned. After having conducted investigation, police submitted a detailed report, thereby stating that no case is made out against the petitioners, but learned Judicial Magistrate, instead of proceeding on

the said report, treated the complaint filed at the behest of respondent No.2, as a private complaint and directed him to lead preliminary evidence. Respondent No.2 examined himself. On the basis of preliminary evidence adduced by him, court below, vide order dated 22.12.2014, came to the conclusion that there are sufficient grounds for issuance of process against the accused i.e. petitioners herein for commission of offences punishable under sections 409, 465, 467, 468, 471 read with section 120-B of Indian Penal Code and accordingly, summoned them.

6. Being aggrieved and dissatisfied with aforesaid order passed by Learned Judicial Magistrate First Class, Nahan, petitioners herein filed revision petition under section 397 Cr.P.C, which came to be registered as case No. 3-Cr.R/10 of 2016, titled as **Kailash Chand and others versus Liaquat Ali Khan and another**. Vide order dated 2.7.2018, learned Sessions Judge, Nahan dismissed the afore revision petition. In the afore background, petitioners have approached this Court under section 482 Cr.P.C(now Section 528 of BNSS), praying therein to quash and set aside the order dated 22.12.2014 passed by Learned Judicial Magistrate First Class, Nahan District Sirmour, Himachal Pradesh in Criminal Complaint No.55/4 of 2014 as well as order dated 02.07.2018 passed by learned Sessions Judge, Nahan, District Sirmaur, Himachal Pradesh, whereby

afore order passed by Learned Judicial Magistrate First Class came to be upheld and for quashing of the complaint.

7. I have heard learned counsel for the parties and have gone through the record carefully.

8. Before ascertaining the correctness and genuineness of the aforesaid submissions and counter submissions made on behalf of learned counsel representing the parties, this Court deems it necessary to discuss /elaborate upon the scope and competence of this Court to quash the FIR as well as criminal proceedings, while exercising power under Section 482 CrPC.

9. A three-Judge Bench of the Hon'ble Apex Court in case titled **State of Karnataka v. L. Muniswamy and others**, 1977 (2) SCC 699, held that High Court, while exercising power under Section 482 Cr.PC (now Section 528 of BNSS) is entitled to quash the proceedings, 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.

10. Subsequently, in case titled **State of Haryana and others v. Bhajan Lal and others**, 1992 Supp (1) SCC 335, the Hon'ble Apex Court, while elaborately discussing the scope and competence of High Court to quash criminal proceedings under Section 482 Cr.PC(now Section 528 of BNSS) laid down certain principles governing the jurisdiction of High Court to exercise its

power. After passing of aforesaid judgment, issue with regard to exercise of power under Section 482 Cr.PC (now Section 528 of BNSS), again came to be considered by the Hon'ble Apex Court in case bearing Criminal Appeal No.577 of 2017 (arising out of SLP (CrL.) No. 287 of 2017) titled ***Vineet Kumar and Ors. v. State of U.P. and Anr.***, wherein it has been held that saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose i.e. court proceedings ought not be permitted to degenerate into a weapon of harassment or persecution.

11. The Hon'ble Apex Court in Prashant ***Bharti v. State (NCT of Delhi)***, (2013) 9 SCC 293, relying upon its earlier judgment titled as ***Rajiv Thapar and Ors v. Madan Lal Kapoor***, (2013) 3 SCC 330, reiterated that High Court has inherent powers under Section 482 Cr.PC (now Section 528 of BNSS), to quash the proceedings against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charge, but such power must always be used with caution, care and circumspection. In the aforesaid judgment, the Hon'ble Apex Court concluded that while exercising its inherent jurisdiction under Section 482 of the Cr.PC(now Section 528 of BNSS), Court exercising such power must be fully satisfied that the material produced by the accused is such, that would lead to the conclusion, that his/her defence is based on sound, reasonable, and indubitable facts and the material adduced on record

itself overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. Besides above, the Hon'ble Apex Court further held that material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C (now Section 528 of BNSS) to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice. In the aforesaid judgment titled as Prashant Bharti v. State (NCT of Delhi), (2013) 9 SCC 293, the Hon'ble Apex Court has held as under:-

“22. The proposition of law, pertaining to quashing of criminal proceedings, initiated against an accused by a High Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as “the Cr.P.C.”) has been dealt with by this Court in Rajiv Thapar & Ors. vs. Madan Lal Kapoor wherein this Court inter alia held as under: (2013) 3 SCC 330, paras 29-30)

29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the

accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

30.1 Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

30.2 Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

30.3 Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

30.4 Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5 If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal - proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C.

Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”

12. It is quite apparent from the bare perusal of aforesaid judgments passed by the Hon’ble Apex Court from time to time that 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/her due to private and personal grudge, High Court while exercising power under Section 482 Cr.PC(now Section 528 of BNSS) can proceed to quash the proceedings.

13. Hon’ble Apex Court in case titled **Anand Kumar Mohatta and Anr. v. State (Government of NCT of Delhi)** Department of Home and Anr, AIR 2019 SC 210, has held that abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation and as such, the abuse of law or miscarriage of justice can be rectified by the court while exercising power under Section 482 Cr.PC(now Section 528 of BNSS). The relevant paras of the judgment are as under:

16. Even otherwise it must be remembered that the provision invoked by the accused before the High Court is Section 482 Cr. P.C and that this Court is hearing an appeal from an order under Section 482 of Cr.P.C. Section 482 of Cr.P.C reads as follows:-

“482. Saving of inherent power of the High Court.- 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.”

17. There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High court can exercise jurisdiction under Section 482 of Cr.P.C even when the discharge application is pending with the trial court (G. Sagar Suri and Anr. V. State of U.P. and Others, (2000) 2 SCC 636 (para 7), Umesh Kumar v. State of Andhra Pradesh and Anr. (2013) 10 SCC 591 (para 20). Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced, and the allegations have materialized into a charge sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court.”

14. Hon’ble Apex Court in case titled **Pramod Suryabhan Pawar v. The State of Maharashtra and Anr**, (2019) 9 SCC 608, has elaborated the scope of exercise of power under Section 482 Cr.PC, the relevant para whereof reads as under:-

“7. Section 482 is an overriding section which saves the inherent powers of the court to advance the cause of justice. Under Section 482 the inherent jurisdiction of the court can be exercised (i) to give effect to an order under the CrPC; (ii) to prevent the abuse of the process of the court; and (iii) to otherwise secure the ends of justice. The powers of the court under Section 482 are wide and the court is vested with a significant amount of discretion to decide whether or not to exercise them. The court should be guarded in the use of its extraordinary jurisdiction to quash an FIR or criminal proceeding as it denies the prosecution the opportunity to establish its case through investigation and evidence. These principles have been consistently followed and re-iterated by this Court. In Inder Mohan Goswami v State of Uttaranchal⁵, this Court observed.

“23. This Court in a number of cases has laid down the scope and ambit of courts’ powers under Section 482 CrPC. Every High Court has inherent powers to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 CrPC can be exercised:

- (i) to give effect to an order under the Code;
- (ii) to prevent abuse of the process of the court, and
- (iii) to otherwise secure the ends of justice.

24. Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.”

8. Given the varied nature of cases that come before the High Courts, any strict test as to when the court’s extraordinary powers can be exercised is likely to tie the court’s hands in the face of future injustices. This Court in *State of Haryana v Bhajan Lal*⁶ conducted a detailed study of the situations where the court may exercise its extraordinary jurisdiction and laid down a list of illustrative examples of where quashing may be appropriate. It is not necessary to discuss all the examples, but a few bear relevance to the present case. The court in *Bhajan Lal* noted that quashing may be appropriate where, (2007) 12 SCC 1 1992 Supp (1) SCC 335

“102. (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).

.....

(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 private and personal grudge.”

In deciding whether to exercise its jurisdiction under Section 482, the Court does not adjudicate upon the veracity of the facts alleged or enter into an appreciation of competing evidence presented. The limited question is whether on the face of the FIR, the allegations constitute a cognizable offence. As this Court noted in *Dhruvaram Murlidhar Sonar v State of Maharashtra*, 2018 SCC OnLine SC3100 (“Dhruvaram Sonar”)

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“13. It is clear that for quashing proceedings, meticulous analysis of factum of taking cognizance of an offence by the Magistrate is not called for. Appreciation of evidence is also not permissible in exercise of inherent powers. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken, it is open to the High Court to quash the same in exercise of its inherent powers.”

15. Aforesaid law, clearly stipulates that court can exercise power under S.482 of the Code of Criminal Procedure (now Section 528 of BNSS), to quash criminal proceedings, in cases, 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.

16. Now being guided by the aforesaid proposition of law laid down by the Hon’ble Apex Court, this Court would make an endeavor

to examine and consider the prayer made in the instant petition vis-à-vis factual matrix of the case.

17. Before ascertaining the correctness of rival submissions advanced by earned counsel for the parties to the *lis*, this Court finds it necessary to take note of certain facts, which are germane for the adjudication of present case. It emerges from the record that respondent No.2, prior to filing of the complaint, had filed Consumer Complaint No. 11 of 2011 titled **M/s Paradise Packers vs. State Bank of India and**, but same was dismissed as withdrawn vide order dated 06.12.2012 (Annexure P-9) with liberty to file civil suit in respect of the same cause of action. After withdrawal of aforesaid complaint, respondent No.2 instituted civil suit No.31of 2013 for recovery of Rs. 49, 20,525/- alongwith interest, which is stated to be pending adjudication before this Court (Annexure-P-10). Perusal of the plaint in the aforesaid suit, if read in its entirety, reveals that averments made therein are, by and large, identical to those contained in the complaint filed under Section 156(3) Cr.P.C.

18. Pleadings adduced on record by the petitioners further reveals that in the aforesaid suit, a specific issue to the following effect has been framed:-

“Whether defendant No.1-SBI by forging signatures of a partner of plaintiff No.1-firm i.e. respondent No.2, fraudulently got issued the insurance policy from defendant No.3 without the consent of the plaintiff, if so and its effect?”OPP

19. Precisely, the grouse of the petitioners, as can be gathered from their respective petitions and further canvassed by learned respective counsel, is that the complaint filed under section 156(3) Cr.P.C at the behest of respondent No.2 is nothing, but a clever ploy to circumvent the order dated 15.07.2017 passed by Debts Recovery Tribunal, Chandigarh, whereby respondent No.2, alongwith his partner, has been held liable to pay sum of Rs.28, 80,998/- alongwith with costs, current and future interest. While making this Court peruse complaint filed under section 153(6)Cr.P.C, learned counsel representing the petitioners vehemently argued that no case, much less under sections 409, 465, 467, 468 and 471 read with Section 120-B of IPC is made out against the petitioners, but yet learned Judicial Magistrate, First Class, Nahan, ignoring the police report, wherein it was reported that no case is made out against the petitioners and dispute qua recovery of amount is still pending adjudication before this Court in Civil Suit No.31 of 2013, proceeded to treat the complaint as private complaint and thereafter, erroneously, without due application of mind, issued process against the petitioners. Learned counsel for the petitioners submitted that petitioners, while extending loan facilities to respondent No.2, had ensured that the factory in question was duly insured from time to time. Learned counsel for the petitioners further argued that immediately after grant of term loan and extension of Cash credit limit,

State Bank of India, Kala AMB got the factory and the machinery therein insured through New India Assurance Company through its officer, Sh. Baljinder Pal. However, respondent No.2, being dissatisfied with the valuation of the premises and machinery, independently procured second insurance policy for the same from Oriental Insurance Company Limited, Chandigarh, which fact is evident from the record.

20. Learned counsel for the petitioners further argued that after the alleged incident of flooding, there was no delay attributable to the insurance company, rather insurance claim of respondent No.2 came to be rejected on the ground of delay, as is evident from the record. Learned counsel for the petitioners further argued that bare perusal of the order passed by learned Judicial Magistrate First Class, Nahan, District Sirmour, Himachal Pradesh, which was further upheld by learned Sessions Judge, Nahan District Sirmour, Himachal Pradesh, clearly demonstrates that no cogent and convincing evidence ever came to be produced with regard to allegation of forging of signatures, but yet both the Courts below proceeded to issue process merely on the basis of the statement made by complainant/ respondent No.2. Lastly, learned counsel for the petitioners submitted that in case learned Judicial Magistrate First Class, Nahan was not satisfied with the report submitted by the SHO of the concerned police Station, it could have directed further

investigation, but certainly there was no occasion, if any, to treat the complaint as a private complaint, which is otherwise totally devoid of merit and has been filed solely with a view to evade repayment of loan.

21. To the contrary, Mr. Sumit Raj Sharma, learned counsel representing the respondents, supported the impugned orders passed by learned Courts below. He submitted that had the petitioners, being officials of the State Bank of India, procured insurance policy well in time and for the correct valuation, respondent No.2 would have been duly indemnified for the loss suffered. He submitted that insurance claim submitted by respondent No.2 came to be rejected on account of the failure of the bank officials to obtain insurance coverage of the premises and machinery within time. He further submitted that by way of Civil suit, respondent No.2 has prayed for recovery of certain amount to which he has become entitled on account of loss to the machinery and factory premises in terms of insurance cover, but at the same time, he is well within his right to register case against the petitioners for their having not taken appropriate steps to insure the factory premises and machinery within time, as a result thereof, huge loss has been suffered by respondent No.2. He further submitted that bare perusal of insurance policy suggests that petitioners, who were at the helm of affairs at the relevant time, acted in a highly negligent, callous and casual manner, inasmuch as the factory in question was

shown to be of cardboards etc, whereas same was established for manufacturing adhesive tapes etc. He further submitted that though petitioners had got the second insurance done of his own at his expenses, but yet petitioners recovered the premium of the same from the loan account of respondent No.2. He further submitted that act and conduct of the petitioners clearly suggests the commission of offence, including criminal conspiracy to cause wrongful loss to respondent No.2 and wrongful gain to themselves as well as forgery for the purpose of withdrawal/transfer of funds from the loan account of the firm and for procuring an incorrect insurance policy for the period for which another comprehensive insurance policy had already been obtained by the complainant under information to the bank.

22. Having carefully perused the pleadings as well as other material adduced on record by the respective parties vis-à-vis reasoning assigned by learned Sessions Judge, Nahan, while upholding the order dated 22.12.2014 passed by learned Judicial Magistrate, First Class, Nahan, this Court has no hesitation to conclude that both the Courts below, while taking cognizance of the averments contained in the complaint filed by respondent No.2 under Section 156(3) Cr.P.C, have gone astray. Before issuance of process, both the Courts below failed to ascertain the relevant facts as well as background in which the complaint under Section 156(3) Cr.P.C came to be lodged against the petitioners. Interestingly, pursuant to the

orders passed by learned Judicial Magistrate, First Class, Nahan in the afore complaint, SHO of police Station concerned, at first instance, submitted a detailed report giving therein complete background of the case, stating that no case is made out against the petitioners, but despite the same, learned Judicial Magistrate, First Class, Nahan, proceeded to treat the complaint as a private complaint and issued process against the petitioners for the commission of offences punishable under Sections 409, 465, 467, 468, 471 read with Section 120-B of IPC. Learned Judicial Magistrate, First Class as well as learned Sessions Judge, Nahan completely ignored the fact that accused, named in the complaint, are/were bank officials /officials of insurance company and every action of their, be it in relation to processing of loan or obtaining insurance of the factory premises as well as machinery, is/was in discharge of their official duties/ public functions.

23. It is not in dispute that respondent No.2 had availed Cash Credit Limit and term loan from the State Bank of India and in lieu thereof, mortgaged the property in question with the bank as security. It is also not in dispute that respondent No.2, alongwith his partner, failed to adhere the financial discipline, as result whereof the account became irregular and declared NPA in the year. 2010 itself. Thereafter, notice under Section 13(2) of the SARFAESI Act was issued against respondent No.2 on 26.11.2010. Since despite there

being afore notice, respondent No.2 failed to repay the outstanding amount, Bank was compelled to take physical possession of secured assets i.e., factory premises alongwith machinery. Significantly, it is only after the initiation of proceedings under SARFAESI Act, that respondent No.2 filed complaint under Section 156(3) Cr.P.C against the petitioners, who otherwise being Manager and Field Officer of State Bank of India as well as official of New India Assurance Company, were instrumental in the sanction of the Cash Credit Limit and term loan, as well as in facilitating the insurance.

24. In nutshell, the case of respondent No.2, is that once he had himself obtained insurance policy from the Oriental Insurance Company Limited for the period w.e.f. 04.08.2009 to 03.08.2010, , there was no necessity to procure another insurance during subsistence of the said policy. However, the then Manager, Sh. Kailash Chand and Field Officer, Sh. Ankur allegedly procured second insurance from New India Assurance Company , which was effective from 12.04.2010 to 11.04.2011.

25. This Court, having carefully perused the insurance covers placed on record by respondent No.2 alongwith the complaint, finds that, at first instance, insurance had been obtained by State Bank of India in respect of factory premises and machinery. Since respondent No.2, was not satisfied with the valuation of the insured assets, he himself procured another insurance policy from Oriental

Insurance Company, effective from 04.08.2009 to 03.08.2010, wherein he unilaterally assessed the value of the property at higher rate and duly apprised State Bank of India about the same. Though policy taken by respondent No.2 was effective from 04.08.2009 to 03.08.2010, but yet the then Manager Sh. Kailash Chand and Field Officer Ankur procured another insurance policy in respect of the factory premises as well as machinery from New India Assurance Company through petitioner Sh. Baljinder Singh, an agent of New India Assurance Company for the period w.e.f. 12.04.2010 to mid night of 11.4.2011. Since on account of aforesaid insurance obtained by Manager Sh. Kailash Chand, certain amount towards its premium was deducted from the loan account of respondent No.2, without obtaining any proposal under the signatures of respondent No.2 or his partner, respondent No.2 made allegation of forgery against the then Manager, Field Officer as well as the agent concerned, who are petitioners herein.

26. As has been observed hereinabove, respondent No.2, being dissatisfied with the valuation of the mortgaged property, without taking bank officials into confidence, procured a fresh insurance policy from Oriental Insurance Company on 04.08.2009 at a higher valuation. The said policy insured the property for a sum of Rs. 51, 25,000/-, out of which, Rs. 14 Lakh was towards machinery, Rs. 25 Lakh towards raw material, Rs. 12 Lakh towards the building

and Rs.25,000/- towards furniture and fixtures. Though, aforesaid policy was forwarded to insurance company, but since same was overvalued, coupled with the fact that prime duty to insure the mortgaged property lies with the bank or financial institution extending the loan facility, petitioner-Kailash Chand alongwith Field Officer Ankur, got the mortgaged property insured with New India Assurance Company, against insurance policy, effective from 12.04.2010 to midnight of 11.04.2011, but since value of the property as well as other raw material reflected in the said policy was lower in comparison to the policy independent obtained by respondent No.2, he started leveling allegations of forgery. The persons responsible for issuance of the policy w.e.f. 12.04.2010 to 11.04.2011 have categorically stated that the proposal form for the said policy was submitted and duly signed by respondent No.2. The entire dispute between respondent No.2 and the bank officials arose only after the alleged damage caused to the building, machinery and raw material on account of flooding on 16.04.2010. Since the claim put forth by respondent No.2 qua aforesaid damage to building, machinery and raw material came to be rejected by the insurance company on the ground of delay, he, for the first time, raised allegations of forgery against the bank officials. Prior to filing the complaint on 01.03.2014 under section 156(3)Cr.P.C and even after the alleged incident of flooding dated 16.04.2010, respondent No.2 never raised any dispute with regard to

the second policy obtained by the bank during the subsistence of the policy taken by him from Oriental Insurance Company. Moreover, this Court, having scanned the material adduced on record, coupled with the allegations contained in the complaint under section 156(3) Cr.P.C, is persuaded to agree with the submissions of learned counsel representing petitioners that no loss can be said to have been caused to respondent No.2 by petitioners, namely Sh. Kailash Chand and Ankur, on account of their having procured second policy for the period w.e.f. 12.04.2010.11.04.2011, for the reason that during aforesaid period, mortgaged property was duly insured.

27. The grievance of the respondent No.2 cannot be said to be qua procurement of second policy by the bank officials for the period w.e.f. 12.04.2010.11.04.2011, but his actual complaint and grouse is with regard to valuation of the property reflected in the aforesaid policy, which according to him, was assessed on the lower side. Since it is prime duty of financial institution or the bank at the time of grant of loan to get the mortgaged property insured, coupled with the fact that no objection was ever raised by respondent No.2 at the time of issuance of first policy after grant of loan with respect to valuation of the property, no loss can be said to have been caused to respondent No.2, who otherwise, in desperate attempt to evade his liability towards the bank, though, attempted to lodge claim with

higher value to the insurance company, but same was not accepted being time barred.

28. Interestingly, before lodging the complaint under section 156(3) Cr.P.C against the petitioners, respondent No.2 had filed Consumer Complaint No.11 of 2011, laying therein challenge to the order passed by the insurance company, thereby rejecting his claim. Since, in the aforesaid claim, respondent No.2 had also raked up the issue with regard to the alleged connivance of the then Manager, Field Officer and Agent of the insurance company, and had also claimed damages, complaint having been filed by him, was dismissed as withdrawn with liberty to file a civil suit in respect of same cause of action.

29. In the year 2013, respondent No.2 filed Civil Suit No.31 of 2013 for recovery of sum of Rs. 49,20,525/-, wherein he also raked up the issue with regard to alleged forging of signatures as well as insurance policy taken by the bank officials without his consent. On 18.11.2013, this Court framed specific issues with regard to forgery as well as taking insurance policy without the consent of respondent No.2, but before afore suit could be decided, respondent No.2 filed a complaint dated 01.03.2014 before learned Judicial Magistrate First Class, Nahan, leveling therein the same allegations as were earlier made in consumer complaint filed before the HP State Consumer

Disputes Redressal Commission, Shimla and civil suit pending consideration before this Court, as detailed hereinabove.

30. There is another aspect of the matter that it is not in dispute that pursuant to initiation of proceedings under section 13(2) of the SARFAESI Act vide notice dated 26.11.2010, State Bank of India had taken physical possession of the secured assets, and thereafter respondent No.2 has already been held liable by Debts Recovery Tribunal, Chandigarh to pay total sum of Rs. 28,80,998/- along with interest to the bank vide order dated 15.07.2017 and such order has attained finality. In such circumstances, no loss otherwise can be said to have been caused to respondent No.2, who appears to be making frivolous attempt to evade aforesaid liability by raising issue of insurance of mortgaged assets, which, as per him, were not properly valued.

31. Since respondent No.2 failed to repay the loan, the mortgage property stood taken over by the bank immediately after issuance of notice under section 13(2) of SARFAESI Act, in the year 2010 itself, loss, if any, caused on account of lesser valuation of the mortgaged property at the time of insurance, can be said to have been suffered by the bank and not by respondent No.2, who otherwise in terms of order dated 15.07.2017, passed by Debts Recovery Tribunal, Chandigarh in O.A No.466 of 2011, has been held liable to pay total sum of Rs.28,80,998/-, which he otherwise could not

have got adjusted against the insurance claim, if any, received by the bank. Since the insured property i.e. building, machinery and raw material, were mortgaged in lieu of the loan/term loan and credit facilities, the same was otherwise liable to be taken over and appropriated by the bank on account of failure of respondent No.2 to repay the loan.

32. Leaving everything aside, mere preliminary statement made by respondent No.2 at the time of his making application under Section 156(3) Cr.P.C is/was not sufficient to issue process against the petitioners, who had otherwise discharged their public duties, especially when the averments contained in the complaint were not substantiated by any cogent and convincing evidence. Mere placing on record certain documents does not prove the allegations of forgery.

33. Section 409 IPC talks about criminal breach of trust by public servants, bankers, merchants, or agent. Aforesaid section provides that whoever, being in any manner entrusted with the property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. To invoke aforesaid provision

of law, prosecution is under an obligation to prove that accused is a public servant, banker or agent; was entrusted with property; or had dominion over the same and; that he committed criminal breach of trust in respect thereof. It is not understood as to how and on what basis learned courts below arrived at a conclusion that respondent No.2 had actually entrusted any property to the petitioners in their capacity as public servants. If the allegations levelled by respondent No.2 are tested on the touchstone of Section 405 IPC, no case can be said to have been made out under aforesaid provision of law. As per respondent No.2, petitioners, being bank officials, forged his signatures for obtaining the insurance policy. If aforesaid allegation of respondent No.2 is presumed to be correct, section 409 of IPC cannot be invoked, especially when there is no entrustment of property. Entrustment of property, if any, in the case at hand can be said to be property, which came to be mortgaged in lieu of term loan and cash credit Limit, which remained intact throughout, save and except, some damage in the year, 2010 on account of flooding and ultimately afore property was taken over by the bank towards repayment of loan amount by respondent No.2.

34. Section 465 of IPC provides for punishment for forgery. Term “forgery” has been defined in section 463 IPC. As per aforesaid provision, whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause

damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, can be said to have committed forgery. The basic ingredients of the offence of forgery are the making of a false or forged documents or part thereof, coupled with the requisite intent, namely: (i) to cause damage or injury to the public or any person; (ii) to support any claim or title;(iii) to cause any person to part with property ;(iv) to cause any person to enter into any express or implied contract; or (v) with intent to commit fraud or that fraud may be committed.

35. In the case at hand, the precise allegation of respondent No.2 is that the bank officials i.e petitioners herein, during subsistence of policy taken by him from Oriental Insurance Company Limited, which was effective from 04.08.2009 to 03.08.2010, fraudulently took another policy for the same mortgaged property, valid w.e.f. 12.04.2010 to 11.04.2011, without his consent and by allegedly forging his signatures on the proposal form. Though aforesaid allegation has been specifically denied by the bank officials, but even if same is presumed to be correct, it is not understood, what benefit accrued to the bank officials from such alleged act of forgery.

36. As has been observed hereinabove, the mortgaged property is always got insured by the financial institution/ bank at the

time of grant of loan so that any loss, if caused to the mortgaged property during the subsistence of loan, may be recovered from the insured amount. The very intention of the bank officials in getting the mortgaged property insured at the time of grant of loan is to safeguard the public exchequer. Had the unfortunate incident of flooding, which occurred on 16.04.2010 during the subsistence of policy obtained by respondent No.2 from the Oriental Insurance Company Limited, which was effective from 04.08.2009 to 03.08.2010, taken place on some other date, in all probability, he would not have levelled allegation of forgery against the bank officials i.e. petitioners herein, because his grievance is not with regard to policy taken by the bank, but his grouse from day one was with regard to valuation of the property. Respondent No.2 of his own without taking the bank officials into confidence, got the mortgaged assets insured with Oriental Insurance Company Limited at higher value i.e. Rs. 51, 25,000/-, whereas at first instance, State Bank of India had obtained two insurance policies effective from 08.04.2008 to 07.04.2009. Otherwise also, in no manner could the bank officials, i.e. the petitioners herein, have derived any benefit from the alleged act, since, amount, if any received under the insurance policy obtained at their instance, would necessarily have been adjusted towards the outstanding loan amount.

37. Similarly, offences punishable under Sections 467 and 468 of IPC, which talks about forgery of valuable security, will, etc.,

and forgery for the purpose of cheating, are also not made out against the petitioners. There is nothing to suggest that bank officials i.e. petitioners herein, committed any forgery of documents with the intention of using the same for the purpose of cheating.

38. Section 471 of IPC provides that, whoever, fraudulently or dishonestly uses as genuine any document or electronic record, which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such documents or electronic record. In the case at hand, no document alleged to be forged ever came to be used by the petitioners for getting any benefit, rather insurance cover obtained by the bank officials for the mortgaged property for the period w.e.f. 12.04.2010 to 11.04.2011 was in furtherance of safeguarding the secured assets, which ultimately came to be taken over by the respondent-bank towards repayment of loan amount. If the facts, as detailed hereinabove, are read in their entirety, this Court has no hesitation to conclude that respondent No.2 has left no stone unturned to evade his liability, as has been fastened upon him with the passing of order by Debts Recovery Tribunal, Chandigarh.

39. Immediately, after taking over of his assets, pursuant to his failure to repay the loan amount after receipt of show cause notice under Section 13(2) of SARFAESI Act, respondent No.2 started initiating multiple proceedings, i.e. a complaint before State Consumer

Commission, Civil suit before this Court and finally a complaint under Section 156(3) Cr.P.C, which is the subject matter of the present cases, all arising out of the same cause of action.

40. Interestingly, in the case of petitioner Manoj Kumar Bansal, who was not even in picture at the time of grant of loan as well as taking insurance w.e.f 12.04.2010 to 11.04.2011 has been arrayed as an accused merely on the ground that he failed to provide copy of insurance policy to the complainant, enabling him to settle his claim before the insurance company. Both the courts below, in a mechanical manner, without bothering to look into role played by above Manoj Kumar Bansal, proceed to issue process against him.

41. In view of the discussion made hereinabove as well as material adduced on record, this Court is persuaded to agree with learned counsel for the petitioners that no case much less case under Sections 409, 465, 467, 468, 471 read with Section 120-B of IPC, is made out against the petitioners and as such, no fruitful purpose would be served in continuation of trial against the petitioners under the aforesaid provisions of law, rather continuation of the same besides causing mental agony to the petitioners would amount to sheer abuse of process of law.

42. Consequently, in view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court (supra), the present petitions are allowed. Order dated 02.07.2018 passed by learned

Sessions Judge, Nahan, District Sirmour, Himachal Pradesh (Annexure P-2) and order dated 22.12.2014, passed by learned Judicial Magistrate, First Class, Nahan, Himachal Pradesh (Annexure P-1) as also private complaint filed by respondent No.2, are quashed and set aside qua the petitioners.

Interim orders in all the petitions, if any, are vacated. Pending applications in all the petitions, if any, also stand disposed of.

**(Sandeep Sharma),
Judge**

April 18, 2026
(shankar)