**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr.MMO No.1090 of 2025**
**Date of Decision: 07.05.2026**

Pratap Singh

…….Petitioner

Versus

HDFC Bank Ltd. & Anr.

… Respondents

Coram:
**Hon'ble Mr. Justice Sandeep Sharma, Judge.**
Whether approved for reporting? [1] Yes.

**For the Petitioner:** Mr. Arvind Negi, Advocate.

**For the Respondents**: Mr. Sanjay Kumar Sharma, Advocate.

**Sandeep Sharma, Judge**(oral):

Through instant petition filed under Section 528 of Bharatiya Nagrik Suraksha Sanhita, 2023, prayer has been made on behalf of the petitioner-accused (in short "***accused***") for quashing and setting aside the Criminal Complaint No.613 of 2018 and the order dated 28.09.2024 passed by learned Chief Judicial Magistrate, Shimla, Himachal Pradesh, whereby an application filed by the accused under Section 147 of Negotiable Instruments Act (in short "***Act***") for compounding the offence came to be rejected.

**2.** Precisely, the facts of the case, as emerge from the pleadings as well as other material adduced on record are that respondent-complainant-bank (in short "***complainant-bank***") filed a

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

complaint under Section 138 of the Act in the competent court of law, alleging therein that accused with a view to discharge his lawful liability issued cheque amounting to Rs.3,80,000/- in favour of the complainant, however, the same was dishonoured on account of insufficient funds in the bank account of the accused. Since accused failed to make the payment good within the time stipulated in the legal notice, complainant was compelled to initiate proceedings under Section 138 of the Act before the competent Court of law. However, before same could be taken to its logical end, accused filed an application under Section 147 of the Act, praying therein to compound the offence on the ground that entire cheque amount has been paid. It came to be stated at the behest of the accused that sum of Rs.2,40,000/- was deposited in the bank on 19.09.2021 and sum of Rs. 1,50,000/- was deposited in the bank on 11.08.2022. Though cheque was issued for a sum of Rs.3,80,000/-, but accused deposited sum of Rs.3,90,000/- after filing of the complaint under Section 138 of the Act. However, Court below proceeded to reject the application on the ground that complainant had not consented to the compromise and same could not be arrived at without its consent. If the order dated 28.09.2024 passed by the Court below is perused in its entirety, factum with regard to receipt of Rs.3,90,000/- was duly acknowledged by the complainant-bank. However, it came to be argued at the

behest of the complainant-bank that aforesaid amount was not towards cheque, rather same was deposited in the loan account of the accused. In afore background, petitioner has approached this Court in the instant proceedings for quashing of complaint as well as order dated 28.09.2024, as detailed hereinabove.

**3.** Precisely, the grouse of the accused, as has been highlighted in the petition and further canvassed by Mr. Arvind Negi, learned counsel representing the accused, is that once it stands duly established on record that accused had deposited sum of Rs.3,90,000/- against the cheque amount of Rs.3,80,000/-, there was no occasion, if any, for the Court below to reject the prayer made on behalf of the accused for compounding the offence. Mr. Negi further submitted that amount was deposited immediately after filing of the complaint under Section 138 of the Act, but yet complainant-bank, with a view to harass the accused, refused to compound the offence. He submitted that once entire cheque amount had been paid that too during the pendency of the proceedings under Section 138 of the Act, no fruitful purpose would be served in keeping the complaint alive, rather same could have been disposed of as compounded. Mr. Negi, learned counsel for the accused, while stating that sum of Rs.3,90,000/- deposited by him was towards cheque amount,

submitted that remaining loan amount shall also be paid by the accused in due course of time.

**4.** To the contrary, Mr. Sanjay Kumar Sharma, learned counsel representing the complainant-bank, supported the impugned order dated 28.09.2024. He submitted that though accused had deposited sum of Rs.3,90,000/- during the pendency of the complaint under Section 138 of the Act, but same was not towards the cheque, which was subject matter of the proceedings under Section 138 of the Act, rather it was directly deposited in the loan account, wherein as per record, sum of Rs.6,10,000/- remains due as of today. He further submitted that after his having paid sum of Rs.3,90,000/-, not even a single penny has been paid till date. He further submitted that by now it is well settled that complainant cannot be compelled to give his consent for compounding because mere repayment of cheque amount does not absolve the accused of his criminal liability.

**5.** I have heard learned counsel of the parties and gone through the record carefully.

**6.** Before ascertaining the genuineness and correctness of the submissions and counter-submissions having been made by the learned counsel for the parties vis-à-vis prayer made in the instant petition, this Court deems it necessary to discuss/elaborate upon the scope and competence of this Court to quash the criminal

proceedings while exercising power under Section 482 of Cr.PC (now 528 of BNSS).

**7.** 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 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.

**8.** 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 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, 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.

**9.** 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., 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, 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/their 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. 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)
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> 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?
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> 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?
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> 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."

**10.** 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 can proceed to quash the proceedings.

**11.** The Hon'ble Apex Court in case tilted **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. 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:-
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> > "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."
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> 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."

**12.** The 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.
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> "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:
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> (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.
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> 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 Lal6 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).

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(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."
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> 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."

**13.** Aforesaid law, clearly stipulates that court can exercise power under Section 482 of the Code of Criminal Procedure, 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.

**14.** 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.

**15.** Admittedly, in the case at hand, accused had issued cheque amounting to Rs.3,80,000/- towards discharge of lawful liability. It is also not in dispute that afore cheque was dishonoured and thereafter complainant instituted proceedings under Section 138 of the Act, but before same could be taken to its logical end, accused deposited sum of Rs.3,90,000/- i.e. Rs.2,40,000/- was deposited on 19.09.2021 and sum of Rs.1,50,000/- was deposited on 11.08.2022. Immediately after deposit of aforesaid amount, accused filed an application under Section 147 of the Act, praying therein to compound the offence.

**16.** Though complainant-bank fairly admitted factum with regard to deposit of aforesaid sum of Rs.3,90,000/-, but it refused to give its consent for compounding on the ground that afore sum of Rs.3,90,000/- had not been received in lieu of cheque amount, rather same had been deposited in the loan account. Though Court below was fully convinced with repayment of cheque amount, but yet having taken note of objections raised at the behest of complainant-bank, whereby it refused to give its consent, proceeded to reject the application. Once sum of Rs.3,90,000/- came to be deposited in the loan account and cheque amounting of Rs.3,80,000/-, which is the subject matter of the present case, was issued towards discharge of lawful liability, this Court is not persuaded to agree with Mr. Sanjay

Kumar Sharma, learned counsel for the complainant-bank, that sum of Rs.3,90,000/- deposited by the accused cannot be considered to have been deposited in lieu of cheque amount. Admittedly, in the case at hand, loan account of the accused had become irregular on account of non-payment of installments and accused with a view to regularize his loan account issued cheque amounting to Rs.3,80,000/-, which was dishonoured. However, during the pendency of the proceedings under Section 138 of the Act, which were initiated on account of dishonour of cheque issued by the accused, accused deposited sum of Rs.3,90,000/-, as such, this Court is persuaded to conclude that sum of Rs.3,90,000/- deposited by the accused during the pendency of complaint under Section 138 of the Act was in lieu of cheque, which was also issued for getting the loan account regularized. Once accused has already paid cheque amount that too during the pendency of the proceedings under Section 138 of the Act, there was no reason for the Court below to reject the application filed by the accused under Section 147 of the Act for compounding the offence. Otherwise also, this Court is of the view that offence under Section 138 of the Act, alleged to have been committed by the accused, is yet to be proved in accordance with law. It was before conclusion of the proceedings under Section 138 of the Act that accused proceeded to deposit the amount, whereafter, there

was otherwise no occasion for the Court below to continue with the proceedings under Section 138 of the Act. Question of compounding the offence would have arisen only, if the Court below, on the basis of evidence led on record by the respective parties, had held the accused guilty of his having committed offence punishable under Section 138 of the Act, which admittedly in the case at hand, never happened, rather entire cheque amount came to be deposited before disposal of the complaint filed by the complainant-bank under Section 138 of the Act. Otherwise also, question of consent, if any, of the complaint is immaterial. However, Court below, taking note of the fact that complainant-bank was unnecessarily dragged into litigation for realization of its own money, could have awarded some amount on account of litigation charges. Since it stands duly established on record that entire cheque amount had been deposited with the complainant-bank, which has been otherwise agreed to be adjusted in the loan account by the complainant-bank as has been recorded in order dated 28.09.2024, no fruitful purpose would be served in case complaint filed at the behest of the complainant under Section 138 of the Act is permitted to continue, rather that would unnecessarily put the accused to ordeal of protracted trial, which is otherwise bound to fail.

**17.** Consequently, in view of detailed discussion made hereinabove as well as law taken into consideration, this Court finds merit in the present petition and accordingly, the same is allowed. Criminal Complaint No.613 of 2018 and the order dated 28.09.2024 passed by learned Chief Judicial Magistrate, Shimla, Himachal Pradesh, are quashed and set aside. However, having taken note of the fact that complainant was unnecessarily dragged into litigation for realization of its amount, this Court deems it fit to impose costs of Rs.25,000/- upon the accused, which shall be paid to the complainant-bank within six weeks, failing which, he shall render himself liable for penal consequences as well as contempt of court. Ordered accordingly. Needless to say, complainant-bank shall always at liberty to realize the outstanding loan amount in accordance with law.

**(Sandeep Sharma),**
**Judge**

May 07, 2026
**(sunil)**