IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO No. 814 of 2025
Date of Decision: 01.07.2026

Sourabh Kumar **……...Petitioner**

Versus

State of Himachal Pradesh & another **…....Respondents**

Coram
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? Yes.

For the Petitioner: Ms. Shreya Chauhan, Advocate.

For the Respondent(s): Mr. Rajan Kahol Additional Advocate General with Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General, for the respondent-State.

Sandeep Sharma, J. *(Oral)*

By way of instant petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, prayer has been made on behalf of the petitioner for quashing of FIR No.142 of 2020, dated 10.09.2020, under Sections 279, 337, 304-A of IPC and Section 187 of Motor Vehicles Act, registered at Police Station, Bhawarna, District Kangra, Himachal Pradesh as well as consequent proceeding pending in the competent court of law.

2. For having bird's eye view, the facts relevant for adjudication of the case at hand are that FIR No.142 of 2020 came to be registered at Police Station, Bhawarna, District Kangra, Himachal Pradesh, on the statement of Sh. Munish Kumar, son of Sh. Trilok Chand, resident of Village and Post Office Pharer, Tehsil Palampur, District Kangra, Himachal Pradesh (respondent No.2), who alleged that 10.09.2020, at about 9.15 AM, while he was going towards Paror bridge on his motorcycle, another motorcycle bearing registration No. HP-29-B-7448 was also moving ahead of his motorcycle and when afore motorcycle reached near Paror bridge, a jeep bearing registration No. HP-37-G-2266 came from the wrong side and hit motorcycle, as detailed hereinabove, as a result of which, rider of the motorcycle bearing registration No. HP-29-B-7448 fell on the road and suffered injuries. Complainant alleged that the accident occurred on account of rash and negligent driving of the driver of vehicle bearing registration No. HP-37-G-2266, as a result of which, FIR, sought to be quashed, came to be lodged against Sh. Dilip Kumar, driver of the offending jeep. Since during the course of the investigation, it came to be transpired that alleged road accident occurred specifically due to a damaged patch on the main road, which was being maintained by NHAI, the petitioner herein, who at the

relevant time was posted as Deputy Manager (Technical) in the Office of NHAI located at Palampur, was also arraigned as an accused.

3. Police after having completed the investigation has already presented the challan in the Court of learned Judicial Magistrate, First Class, Court No.2, Palampur on 24.06.2021, wherein petitioner herein has been also made an accused alongwith the driver of the offending jeep, as detailed hereinabove, for his having allegedly committed the offence punishable under Sections 279, 337 and 304-A of IPC and Section 187 of Motor Vehicles Act. Since driver of the motorcycle bearing registration No. HP-29-B-7448 subsequently succumbed to his injuries, a case under Section 304-A IPC came to be registered against the present petitioner as well as driver of the offending jeep.

4. Before the case at hand could be heard and decided on the basis of the pleadings as well as evidence adduced on record by the respective parties, petitioner herein has approached this Court in the instant proceedings for quashing of the FIR on the ground that no case muchless under Section 336 is made out against the petitioner.

5. While inviting attention of this Court to the contents of the FIR, Ms. Shreya Chauhan, learned counsel representing the petitioner,

vehemently argued that at no point of time, complaint, if any, ever came to be made with regard to rash and negligent act, if any, of the petitioner, rather complainant specifically stated that accident occurred on account of rash and negligent driving of the driver of offending vehicle i.e Dilip Kumar. She submitted that mere existence of potholes or a damaged patch on the road would not constitute offence, if any, punishable under Section 336 IPC. She submitted that as per aforesaid provisions of law, person charged under aforesaid section ought to have been committed rash and negligent act as to endanger human life or the personal safely of others. Ms. Chauhan, further submitted that in the case at hand accident occurred on account of rash and negligent driving of Dilip Kumar driver of the offending vehicle and as such, there was no occasion, if any, to arraign the petitioner as an accused, who is otherwise not responsible for the maintenance of the road. She further submitted that there is nothing on record to suggest that prior to the accident, report, if any, with regard to potholes on the National Highway was ever made to NHAI, which subsequently failed to fill them up. Petitioner herein, who was neither present at the spot nor was responsible to maintain the road in any manner being junior most officer, there was no occasion, if any, to charge petitioner under section 336 of IPC.

6. To the contrary, Mr. Anish Banshtu, learned Deputy Advocate General, representing the respondent-State, vehemently argued that though at first instance, no allegation with regard to non-maintenance of road in question was levelled against the petitioner, but once during investigation, it emerged that accident in question happened on account of deteriorated condition of the road, which was being maintained by NHAI, no illegality can be said to have been committed by the respondent-State, while arraigning petitioner as an accused, because he otherwise being Deputy Manager of the NHAI was not responsible to maintain the road. While referring to Section 336 of IPC, learned Deputy Advocate General argued that whoever does any act so rashly or negligently so as to endanger human life or the personal safety of others is liable to be punished under aforesaid provisions of law. He submitted that petitioner, being the Deputy Manager of NHAI, failed to maintain the road, as a consequence of which, lives and personal safety of thousands of commuters using the said road are endangered.

7. Learned counsel representing the petitioner further argued that petitioner otherwise could not be held vicariously liable for the responsibility, if any, of NHAI to maintain the road. She submitted that petitioner though was working as Deputy Manager, but in no manner was associated with the

maintenance of the road and as such, he ought not have been arraigned as an accused in the case at hand.

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

9. 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 the scope and competence of this Court to quash the FIR as well as criminal proceedings, while exercising power under Section 528 of Bharatiya Nagarik Suraksha Sanhita.

10. 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 on the basis of 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 no. (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 noncognizable 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. From the aforesaid exposition of law, it is clear that power under Section 482 Cr.P.C.(Now section 528 of BNSS) can be exercised in the following conditions:(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.

12. 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.

13. Precisely, the case of the petitioner is that no case much less under Section 336 of IPC is made out against him. To ascertain the correctness of aforesaid submissions made on behalf of the petitioner, it would be apt to take note of Section 336 of IPC, which reads as under:

> **336. Act endangering life or personal safety of others.—**
>
> Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

14. Careful perusal of aforesaid provisions of law, clearly reveals that whoever does any act so rashly or negligently as to endanger human life or the personal safely of others shall be punished with imprisonment which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

15. To invoke aforesaid provisions of law, it is incumbent upon the prosecution to prove that person charged with aforesaid section committed

rash and negligent act so as to endanger human life or the personal safety of others. Admittedly, in the case at hand, FIR sought to be quashed, came to be lodged at the behest of Munish Kumar, who alleged that on the date of alleged incident, motorcycle, being driven by the accused, was hit by the offending jeep, which at the relevant time was being driven by co-accused Dilip Kumar. Since during investigation, it transpired, rather was claimed at the behest of the accused that accident occurred on account of bad road condition, police, after having visited the spot, also arrived at a conclusion that accident occurred on account of potholes on the National Highway. Interestingly, neither complainant nor other witness associated by the prosecution to prove its case, ever stated something with regard to negligence, if any, of the petitioner to maintain the road, rather they categorically stated that accident occurred on account of rash and negligent act of co-accused Dilip Kumar, who at the relevant time was driving the offending vehicle.

16. True it is that the petitioner at the time of the accident was working as Deputy Manager, but such fact may not be sufficient to conclude that he was alone responsible for maintenance of National Highway, rather he being junior official could have executed such works, which were assigned

to him. No evidence, worth credence, has been adduced on record by the prosecution to prove that responsibility for maintaining the road in question was of petitioner. Needless to say, National Highways are maintained by the NHAI, which comprises of many officials and work is done by the concessioner. Otherwise also, under agreements, if any, interse NHAI and concessioner, responsibility to maintain the road is of concessioner.

17. Leaving everything aside, when there is no specific allegation with regard to rash and negligent act, if any, of the petitioner in the capacity of Deputy Manager of NHAI, coupled with the fact that complainant specifically alleged that the accident occurred on account of rash and negligent driving of co-accused Dilip Kumar, there was no occasion, if any, for the police to arraign petitioner as an accused. As has been observed hereinabove, to invoke Section 336 of IPC, it is incumbent upon the prosecution to prove act of rash and negligent. Though, it came to be argued at the behest of the respondent-State that responsibility to maintain the road was of NHAI, which at the relevant time was being taken care of by present petitioner in the capacity of Deputy Manager, however, no evidence to substantiate aforesaid claim has been adduced on record. There is nothing on record to suggest that intimation with regard to existence of potholes on

National Highway was ever given to the petitioner, who despite his having knowledge of existence of potholes on the National Highway failed to fill up the same. Since there is nothing on record that factum of existence of potholes on the National Highway was very much in the knowledge of Deputy Manager i.e. petitioner, he cannot be held liable for any act of rashness and negligence, as prescribed under Section 336 of IPC. Moreover, this Court finds that complainant, while lodging the complaint nowhere stated that accident occurred on account of existence of potholes, rather categorically stated that accident had occurred on account of rash and negligent driving of co-accused Dilip Kumar.

18. True it is that in the accident unfortunately one person lost his life, but moot question, which needs determination in the case at hand, is that whether cause of accident was on account of existence of potholes on the road or the rash and negligent driving of the driver of offending vehicle. Though, prosecution has adduced on record evidence to the effect that on the date of alleged incident offending vehicle was being driven by co-accused Dilip Kumar rashly and negligently, but admittedly, there is no evidence suggestive of the fact that collision of motorcycle being driven by the deceased and offending vehicle being driven by the co-accused Dilip Kumar

was on account of existence of potholes on the road. For the reasons stated hereinabove, this Court is fully convinced that no case muchless under Section 336 of IPC is made out against the petitioner.

19. There is another aspect of the matter that petitioner herein, being Deputy Manager of the NHAI, could not have been held vicariously liable for criminal act, if any, of NHAI. Admittedly, duty to maintain road is of NHAI and petitioner being employee of NHAI, who at the relevant time, was working as Deputy Manager cannot be held solely responsible for maintenance of the road, especially when funds as well as manpower to execute the work on the site is to be provided by the high-ups. Hon'ble Apex Court in case titled **HDFC Securities Limited vs. State of Maharashtra, AIR 2017(SC) 61,** has categorically held that Indian Penal Code does not provide for vicarious liability for any offence alleged to have been committed by a Company. If such liability was sought to be impugned by the legislature creating a legal fiction, the same would have been specifically provided in the statute as is the case in the Negotiable Instruments Act. In another case, titled **Sharad Kumar Sanghi vs. Sangat Rane, (2015)12 SCC 781,** Hon'ble Apex Court held that when a complainant intends to rope in the Managing Director or any officer of the company, it is essential to make the requisite

specific allegations to constitute the vicarious liability. In case titled, **GHCL Employee Stock Option Trust vs. Nimes Ramesh Mehta, (2013) 4 SCC 505,** wherein it came to be held by Hon'ble Apex Court that criminal law machinery cannot be sent into motion as a matter of course, rather summoning order passed by the Magistrate must reflect application of mind to the facts of the case. True it is that petitioner is employee of NHAI, which otherwise is responsible to maintain the National Highway, but failure of NHAI to maintain the road cannot made its employee vicariously liable for alleged act of the NHAI.

20. Having scanned contents of the FIR as well as other evidence adduced on record to prove charge under Sections279, 337, 304-A of IPC and Section 187 of Motor Vehicles Act against the petitioner, this Court has no hesitation to conclude that evidence collected on record is not sufficient to connect accused with the offence alleged to have been committed by him under Section 279, 337, 304-A of IPC and Section 187 of Motor Vehicles Act, and as such, no fruitful purpose would be served in continuation of trial against the petitioner under the aforesaid provisions of law, rather continuation of the same besides causing mental agony to the petitioner would amount to sheer abuse of process of law.

21. Consequently, in view of the detailed discussion made herein-above as well as law laid down by the Hon'ble Apex Court, present petition is allowed and FIR No.142 of 2020, dated 10.09.2020, under Sections 279, 337, 304-A of IPC and Section 187 of Motor Vehicles Act, registered at Police Station, Bhawarna, District Kangra, Himachal Pradesh as well as consequent proceeding pending in the competent Court of law, are quashed and set-aside qua the petitioner. Petitioner is acquitted of the charges framed against him in the aforesaid FIR. Accordingly, present petition is disposed of, so also pending applications, if any.

July 01, 2026
(shankar)

(Sandeep Sharma),
Judge