



# **HIMACHAL PRADESH**

**Judicial Services Exam**

**CIVIL JUDGE (Junior Division)**

**Himachal Pradesh Public Services Commission**

**Judgement**

**Volume - 2**



# HIMACHAL PRADESH JUDICIARY SERVICES

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## [Section 391 of Cr.P.C.]

**Circumstances in which Appellate Court can take additional evidences depends upon the facts and circumstances of each case but cannot be received as disguise for a retrial.**

Brig. Sukhjeet singh (Retd) MVC V. State of UP & ors.

**Division Bench of Hon'ble Supreme Court**

Hon'ble Ashok Bhushan & K.M. Joseph JJ.

**Dated:** Feb 06, 2019

Appeal before the Hon'ble Supreme Court was concerned with the rejection of application filed by the appellant under Section 391 Cr.P.C. before Session Judge and Further, High Court rejected to exercise its inherent powers under Section 482 against such order of session judge. Issue in this case was as to the circumstances in which the Appellate Court can rightfully exercise its discretion under section 391 Cr.P.C.

Hon'ble Supreme Court observed and reiterated the well settled principle that circumstances in which Appellate Court can take additional evidences cannot be enlisted or enumerated like a fixed formula and depends upon the facts and circumstances of each case. However, evidences cannot be received in such a way so as to cause any prejudice to the accused, or as a disguise for a retrial or to change the nature of the case against him. And further analyze the provisions as to the discretion of the Appellate Court to take additional evidences as following:

1. Chapter XXIX of 1973 Code deals with 'Appeals'. Keywords in Section 391(1) are "if it thinks additional evidence to be necessary", the word 'necessary' used under Section. 391(1) is to mean necessary for deciding the appeal.
2. Ultimate object of section 391 is to appropriately decide the appeal by the Appellate court to secure the ends of justice. There are no fetters on the power under Section 391.
3. Additional evidences must be necessary, not because it would be impossible to pronounce judgment but because there would be failure of

justice without it [Rajeshwar Parasad Misra vs. State of West Bengal and Anr. (1965)].

4. The power must be exercised sparingly and only in suitable cases. And once such action is justified then there is no restriction on the kind of evidence which may be received.
5. Additional evidence cannot and ought not to be received in such a way so as to cause any prejudice to the accused. It is not a disguise for a retrial or to change the nature of the case against the accused.
6. When statute grants right to appeal to an accused, he has rights to take all steps and take benefit of all powers of the Appellate court in the ends of the justice.
7. In a criminal case Appellate Court has to consider as to whether conviction of the accused is sustainable or the appellant has made out a case for acquittal

Hon'ble Supreme Court observed in the present case firstly, that appellant was convicted on 7.10.2013 and appeal was filed on next date 8. 10.2013 so calling the application as "filed at belated stage" itself was unjustified. Secondly, the prosecution took twelve year's time in leading evidence before the trial Court and the appellant filed appeal the very next day of trial court's decision then appellant cannot be castigated with the allegation made by HighCourt that he intends to delay the appeal to eternity.

Finally, in the light of above facts and circumstances the Hon ble Supreme Court held that Appellate court has failed to exercise its jurisdiction under Section 391 Cr.P.C. and has committed error in rejecting the applications under Section 391 Cr.P.C. and order of High court refusing to exercise his discretion under Section 482 is also set aside and the appeal was allowed accordingly.

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## [Section 456 of the Criminal Procedural code, 1973]

**Limitation of 30 days would not apply if Trial Court already ordered restoration of possession in the judgement.**

Mahesh Dube v. Shivbodh and Ors.

**2 Judge Bench:** Sanjay Kishan Kaul & Deepak gupta JJ.

**Judgement delivered on:** February 12, 2019

**Judgement delivered by:** Justice Deepak Gupta.

### Law point

1. The limitation under section 456 Cr.P.C will not apply in those cases where the Trial Court, while pronouncing judgment, ordered the restoration of the property whose possession is forcefully taken.
2. The limitation period under section 456 Cr.P.C. is only applicable on the Trial Court and not for other Courts.

### Brief facts

Shankar Prasad Dube, father of the respondents (FR) was a tenant of Prayag Prasad Dube, father of the Appellant (FA). A suit for eviction on account of non-payment of rent was filed by FA against FR and the suit was decreed in favour of FA. In execution of the decree, possession of the house was delivered to FA on 26.11.1985, and he, put his own lock on the house. On the night intervening on 26.11.1985 and 27.11.1985, the respondents herein along with FR and grandmother (GR) trespassed into the house of FA and forcibly took possession of the house. Thereafter, FA lodged a report against the respondents, FR and GR. Charges were framed against the accused. GR died during the pendency of the trial and the respondents along with FR were convicted by the Trial Court u/s 448 of I.P.C. The Trial Court while convicting the respondents and FR also directed that the case property be handed over to the complainant. The respondents and FR filed an appeal before the Sessions Judge which was dismissed After dismissal of appeal, FA filed an application u/s 456 Cr.P.C. for handing over the possession of the property to him. The Trial Court rejected the application only on the ground that it was filed beyond the period of 30 days from the date of order of the Appellate

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Court. A Revision Petition was filed, which was dismissed. A petition u/s 482 of the Criminal Code was filed before the High Court and the same was also dismissed. An appeal was then filed before the Hon'ble Supreme Court.

### **Point of determination**

Whether the application in Trial Court, Revision petition and the petition under section 482 CrPC was wrongly rejected or dismissed by the High Court?

### **Observations of the Hon'ble supreme court**

Hon'ble Supreme Court observed the following:

1. The bare reading of the Sub Section 1 of Section 456 Cr.P.C, clearly indicates that the Trial Court can pass an order for restoration of the possession of the proper. The person who was forcibly dispossessed and no such order shall be passed after one month of the date of conviction of the accused.
2. But, in the present case, the Trial Court while convicting the accused had passed an order directing restoration of the property and the property in the case to be handed over to the petitioner FA.
3. The property mentioned in the order of the Trial Court is no other case property except the property whose possession was forcibly taken by the respondents and FR.
4. The sub section 2 of section 456 Criminal Code, no limitation has been provided for the higher courts to make such order. (H. P. Gupta v. Manohar Lal AIR 1979 S.C. 443).

### **Decision of the Hon'ble Supreme Court**

The Hon'ble Supreme Court held that:

1. he application for handing over the possession filed by the FA after dismissal of the appeal filed by the Respondents was an order already passed by the Trial Court while convicting the accused
2. Therefore, limitation of 30 days would not apply. It would apply only if the Trial Court had not passed any order in respect of the case property while convicting the accused.

Hence, the Hon'ble Court allowed the present appeal and set aside the order of the High Court.

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**[482 CrPC]**

## **Criminal Complaints Cannot Be Quashed Merely Because Allegations Appear To Be of a Civil Nature**

Sau. Kamal shivaji pokarnekar.

Versus

State of Maharashtra and others

### **Division Bench**

Hon'ble L. Nageswara Rao & M.R. Shah JJ.

**Dated:** February 12th, 2019.

**Delivered By:** L. Nageswara Rao, J.

### **Law point**

1. Defence, if established during the trial, may lead to acquittal, is no ground for quashing the complaint at the threshold.
2. At the stage of summons, the only question relevant is whether the averments in the complaint spell out the ingredients of the criminal offence or not.

### **Brief Facts**

The Father (Shamar Nalaveide) of complainant expired on 17/01/1994. The Respondent committed forgery on the complainant as he prepared false documents on the basis of which, a development agreement dated 11/12/2002 came into existence, complainant alleged that the Respondents, by developing a false agreement, made themselves liable for being prosecuted u/s 420, 465 467, 468, 471 read with Section 34 of Indian Penal Code (IPC). Complaint was filed for the same by the complainant and an investigation u/s 156(3) of Cr.P.C. was commenced. An investigation report was submitted by the police stating that the matter appeared to be of a civil nature.

### **Decision of trial court**

The Trial Court recorded the statement of the husband of the Appellant and directed issuance of process to the Respondents. The Respondent filed a

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revision petition, challenging the issuance of process against them, which was dismissed. Thereafter, the Respondent filed a writ petition, in the High Court.

## **Decision of the high court**

Hon'ble High Court allowed the writ petition file by the Respondent, holding that the dispute is of civil nature and criminal proceeding against the Respondent would be an abuse of the process of law. The disputed document cannot be stated to be a sham as the deceased, during his lifetime stated on oath that he had handed over the possession of the land to the Respondents.

Feeling aggrieved thereby the Appellant filed the present appeal.

## **Point of determination**

Whether the High Court was right in setting aside the order of the Trial court by which process was issued?

## **Contention of counsel of the appellant**

Ld. Counsel for the Appellant submitted that:

- \* The High Court acted in excess of its jurisdiction in setting aside the order of the Trial Court by which process for summoning the accused was issued.
- \* The evaluation of the merits of the allegations made on either side, cannot be resorted at the stage of issuance of process as at this stage, the test is to see by the Trial Court is whether there is a prima facie case against the accused or not.

## **Contention of counsel of the respondent**

Ld. Counsel for the Respondents submitted that:

1. A proper evaluation of the material on record would disclose that the complaint frivolous.
  2. The dispute is essentially of a civil nature and the ingredients of the offences that areal. GED against the respondent are not made out.
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## **Observation of the Hon'ble supreme court**

1. The magistrate must not undertake the exercise to find out whether the material would lead to the conviction or not. (Sonu Gupta V. Deepak Gupta & Ors. 2015 (SCC 424))
2. It is not necessary that a meticulous analysis of the case should be done before the trial to find out whether the case would end in conviction or acquittal. If appears on a reading of the complaint and consideration of the allegation in the light of statement made on oath that the ingredients of the offences are disclosed there would be no justification for the High Court to interfere. (State Of Karnataka V. M Devendrappa & Anr. 2002(3) SCC 89)
3. Defence, that may be available, or facts/ aspects which when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At this stage the only question relevant is whether the averments in the complaint spell out the ingredients of the criminal offence or not. (Indian Oil Corporation V NECP India Ltd, And Others 2006 (6) SCC 89).
4. At the stage of issuance of process it is not open to the court to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused.

## **Decision of the Hon'ble Supreme Court**

Hon'ble Supreme Court held that:

1. The High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondent.
  2. A perusal of the complaint discloses the prima facie offences against the Respondents.
  3. Hence, the appeal was allowed and the judgment of the High Court was set- aside.
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## **While Exercising the Inherent Powers under Section 482 of the CrPC, High Court Should Examine Whether the Complaint Is a Civil Dispute Cloaked With Criminal Nature**

Prof R K Vijayasarthi and anr.

Versus

Sudha seedharam

(Supreme Court)

**Judgment:** Hon'ble J. Hemant Gupta, Hon'ble J. Dr. Dhananjaya Y Chandrachud.

**Pronounced by:** Hon'ble Dr. Dhananjaya Y Chandrehud, J.

**Date:** 15 February 2019

### **Law point**

The inherent power under Section 482 of the CrPC should be exercised sparingly and with abundant caution.

### **Facts**

Rajiv Vijayasarthi Ratnam (the son of the appellant) and Savitha Seetharam (the daughter of the respondent) were married on 24 May, 2002. They both moved to U.S.A. and a child was born to them in 2009. Savitha was involved in a car accident case on 5 Feb 2010 and proceedings were initiated against her in abroad.

It was alleged by the appellants that fearing the attachment of their son's property (Rajiv) in proceedings, an amount of Rs. 20 Lacs was transferred by Rajiv to the bank account of his mother-in-law (Sudha) on 17 Feb, 2010. Following a breakdown in marital relation, Savitha and Rajiv have been living separately since Oct, 2010. On 14 Feb 2013, Rajiv filed a Civil Suit for the recovery of money against the Sudha (Mother-in-law) for the return of money allegedly transferred by him into her bank account. The Civil suit is pending. On 25 Feb 2016, Sudha filed a private complaint against appellants which forms the subject matter of present appeal. It is alleged by Sudha, that the amount of Rs. 20 Lacs was returned in cash to the appellants with interest of

Rs. 24000/- on 1 July, 2010 and No receipt was received by her. On 19 May 2016 FIR was registered against the appellants under section 405, 406, 415 and 420 read with Section 34 IPC. Therefore, the appellants filed a petition under Section 482 of the CrPC, to High Court for quashing the FIR but it was rejected by the High Court.

### **Point of determination**

Whether the High Court has erred in rejecting the plea of the appellants for quashing the Criminal proceedings Under Section 482 of the CrPC?

It was observed by The Hon'ble Apex Court that Section 482 of the CrPC saves the inherent Power of the High Court to make necessary orders to secure the ends of justice, and therefore, the High Court, in the exercise of its Jurisdiction under Section 482 of the CrPC, was required to examine whether the averments in the Complaint constitute the ingredients necessary for an offence alleged under Indian Penal Code. 1860.

Therefore, if the averments taken on their face do not constitute the ingredients necessary for the offence, the criminal proceedings may be quashed.

It was also observed by The Hon'ble Bench that, suit for recovery of money was instituted by Rajiv in 2013 and the Complaint alleging offences was filed by Sudha belatedly in 2016. Therefore, it is clear that no amount was entrusted by Sudha to either of the appellants and also that there was no dishonest inducement of Sudha by the appellants to deliver any property. It was stated by Sudha in the Complaint, that the money of Rs 20 Lacs belonged to the Rajiv and it was transferred by him to Sudha on his own volition. Therefore, offences under Section 405, 406, 415 and 420 of IPC are not made out.

The Hon'ble Apex Court referred the Case of Indian Oil Corpn. Versus NEPC India Ltd. (2006) SC.

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Wherein guiding principle were formulated regarding the exercise of Section 482 of the CrPC

1. A Complaint can be quashed where allegations made in the complaint do not prima facie constitute any offences or make out the case alleged against the accused. For this, the complaint has to be examined as a whole but without examining the merits of allegations
2. A complaint may also be quashed where it is a clear abuse of the process of the Court, where criminal proceedings is found to have been initiated with mala fide intention to cause harm
3. The power under Section 482 of the CrPC should be used sparingly and with abundant Caution.
4. The verbatim reproduce of every legal ingredients of an alleged is not required in the complaint.

## **Conclusion**

Therefore, it was observed by the Court that the jurisdiction under Section 482 of the CrPC has to be exercised with care. In present appeal, an attempt had been made to cloak a civil dispute with criminal nature despite the absence of ingredients necessary to constitute a criminal offence and complaint filed by Sudha against the Appellants Constitutes an abuse of process of court and same was liable to be quashed.

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## [Section 482 Cr.P.C.]

**While Exercising powers under section 482 CrPC, the High Court ought to be more vigilant and should considered relevant facts and circumstances under which the accused got the settlement entered.**

State of mp  
Versus  
Dhruv gurjar and another  
With  
Tinku sharma and others

### **Division Bench**

Hon'ble R. Banumathi & R. Subhash Reddy JJ.

**Dated:** February 19, 2019.

**Delivered By:** R. Banumathi, J.

### **Law Point**

1. It is the principal duty of the Court to scan the entire facts to find out the thrust of the allegations and the crux of the settlement.
  2. The power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under section 320 of the Criminal Procedure Code.
  3. The plenitude of the power under section 482 Cr.P.C. by itself makes it obligatory for the High Court to exercise its powers with utmost care and caution.
  4. The width and the nature of the power under section 482 Cr.P.C. itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law.
  5. It is neither necessary nor proper to enumerate the situations in which the exercise of power under section 482 Cr.P.C. may be justified as the exercise of power must be exercised for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law.
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6. Whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulate.

### **Facts of case 1**

An FIR was lodged against the accused at police station, Kotwali, District Datia for the offences punishable under sections 307, 294 and 34 of the IPC. It was alleged that at about 8:00 p.m. in the night on 17.12.2012 when after distributing the milk, Cheeni @ Devasik Yadav (complainant) came in front of his house situated at Rajghat Viram, at the same time, Dhruv Gurjar (accused) being armed with 12 bore gun, Sonu Khamaria, Rohit Gurjar, Avdhesh Tiwari and 3 to 4 other persons came there and asked him to take out his nephew as they wanted to kill him on account of enmity of scuffle took place between his nephew Anand and the accused persons. When complainant told them that my nephew is not here then all of them started to abuse the complainant by using filthy language and when he asked them not to do so, Sonu Khamaria, Rohit Gurjar, Avdhesh Tiwari and 3-4 other persons shouted "kill this bastard", on that Dhruv Gurjar made a fire with intention to kill him, whose pellets struck on three places of his body, i.e., on his forehead, left shoulder and left ear, due to which, he sustained injuries and blood started oozing from it.

According to the complainant, Rampratap Yadav and Indrapal Singh were present on the spot, who had witnessed the incident. On hearing the noise of fire, when other people of vicinity reached there, then, all of these persons fled away from the spot of the incident. On the basis of a report, a Dehati Nalishi bearing No. 0/ 12 was registered under sections 307, 294 and 34 of the IPC. As the complainant sustained injuries, his MLC was performed. On the basis of the contents of the said report, a Crime bearing No. 552/2012 was registered under sections 307, 294 and 34 of the IPC and the criminal investigation was triggered. Thereafter, the investigation team reached the spot and prepared the spot map and articles were seized. The statements of the witnesses were recorded under section 161 of the Cr.P.C. That on 21.03.2013, the police arrested the accused. Accused filed Miscellaneous Criminal Petition under section 482 of Cr.P.C. before the High Court of Madhya Pradesh, Bench at Gwalior for quashing the criminal proceedings

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against the accused arising out of the FIR, on the basis of a compromise arrived at between the accused and the complainant.

## **Decision of the High court**

High Court, in exercise of its powers under section 482 of Cr.P.C., has quashed the criminal proceedings against the accused on the ground that the accused and the complainant have settled the disputes amicably. While quashing the criminal proceedings against the accused, the High Court has considered and relied upon the decision of the Hon'ble Supreme Court in the case of Shiji @ Pappu and others Radhika and another, 38 Dissatisfied by the judgment and order, quashing the criminal proceedings against the accused for the offences punishable under sections 307, 294 and 34 of the IPC by the High Court, the State of Madhya Pradesh preferred appeal before the Honble Supreme Court.

## **Facts of case 2**

On 21.12.2012 one truck driver by name Janki Kushwah informed the complainant Malkhan Singh Yadav, who was also a truck driver that his truck was having some problem and he is near Sitapur village. The complainant reached there and found that his brother Mangal had also reached there with his truck. It was alleged that when they were busy in repairing the truck, four persons at around 5:00 a.m came from the Sitapur village and they had beaten all of them with legs and fists and snatched cash of Rs.7,300/- and two Nokia mobiles having Sim Nos. 9411955930 & 7599256400 from the complainant Malkhan Singh Yadav, Rs. 19,000/- from Mangal and Rs. 16,500 - from Janki Kushwah and Spice mobile having Sim No. 8756194727. That the complainant was driving on that route since last 7 to 8 years and sometimes also stayed in Sitapur village.

According to the complainant, all the four persons were known to him and one of them, namely, accused Tinku Sharma was having 'Addhi' in his hand, the second one was Ravi Sharma, who was having gun in his hand and the other two were Babloo Sharma and Bhurerai. All the accused persons after robbing the complainant, Mangal and Jank Kushwah, went towards Sitapur village. 6:30 a.m., the complainant went to Goraghat Police Station, District Datia lodged the first information report, which was registered as Crime No. 159 against the accused under section 394 of the IPC, 11/13 of M.P.D.V.P.K. the Arms Act.

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Thereafter, the investigation was started and the incident and prepared spot map and also recorded the Ran

Thereafter, complainant and two other persons to the District Hospital, Datia where the Medical Officer found simple injuries on various body parts of police on 27.01.2013 reached to the house of the accused persons and in the village, but could not found them and ultimately prepared the ascendance panchnama.

On 14.03.2013, the Id. Chief Judicial Magistrate, Datia issued proclamation under section 82 of the Cr.P.C. against the accused persons to appear before him on 16.04.2013 Meanwhile, on 12.03.2013, the accused persons approached the High Court of Madhya Pradesh, Bench at Gwalior for quashing of FIR No. 159/2012, registered against them at police Station Goraghat, District for the offence punishable under section 394 of the IPC, 11/13 of M.P.D.P.K. Act and 25/27 of the Arms Act.

### **Decision of the High court**

The High Court, in exercise of its powers under section 482 of Cr.P.C., quashed the criminal proceedings against the accused on the ground that the accused and the complainant have settled the disputes amicably. While quashing the criminal proceedings against the accused, the High Court relied upon the decision of Court in the case of Shiji (supra) State of Madhya Pradesh preferred the appeal before the Hon'ble Supreme Court in both the cases.

### **Contention of state**

Ld. Advocate appearing on behalf of the State of Madhya Pradesh has vehemently submitted

1. The High Court has committed a grave error in quashing the respective FIRs which were for the offences under sections 307,294 and 34 of the IPC and 394 of the IPC, 11/13 of M.P.D.V.P.K. Act and sections 25/27 of the Arms Act respectively. The High Court has quashed the respective BIRs mechanically and solely on the basis of the settlement/ compromise between the complainant and the accused, without even considering the gravity and seriousness of the offences alleged against the accused persons,
-