2025:AHC-LKO:78122

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

APPLICATION U/s 482 No. - 9706 of 2025

Shri Kamal Agrawal (M.D.)

…..Applicant(s)

Versus

State of Uttar Pradesh Through Principal Secretary, Home Department, Luckkow And Another

…..Opposite Party(s)

Counsel for Applicant(s)	:	Ishan Baghel, Mohd. Khalid
Counsel for Opposite Party(s)	:	G.A., Abhay Pratap Singh, Priyanka Singh

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Along with

APPLICATION U/s 482 No. - 9802 of 2025

Satya Prakash Tiwari

…..Applicant(s)

Versus

State of Uttar Pradesh Through Principal Secretary, Home Department, Luckkow And Another

…..Opposite Party(s)

Counsel for Applicant(s)	:	Ishan Baghel, Mohd. Khalid
Counsel for Opposite Party(s)	:	G.A.,

Reserved on 19.11.2025
Pronounced on 27.11.2025
Uploaded on 27.11.2025

Court No. - 16

HON'BLE BRIJ RAJ SINGH, J.

1. Since the common question of facts and law are involved in both the applications, therefore, with the consent of the parties, they are being heard and decided by a common judgement.

2. By means of the applications under Section 482 Cr.P.C., the Applicant/Kamal Agrawal of **APPLICATION U/s 482 No. 9706 of 2025** and the Applicant/Satya Prakash Tiwari of **APPLICATION U/s 482 No. 9802 of 2025** have prayed for quashing of the impugned order dated 06.09.2025 passed by learned Civil Judge (Junior Division) F.T.C./ Judicial Magistrate, Lucknow (in short "trial Court") in Complaint Case No. 9669 of 2024 (Shadab Ahmad Vs. Om Industries (India) Pvt. Ltd. And Others), Police Station – Gomti Nagar Extension, District – Lucknow whereby the application seeking discharge has been rejected. Prayer has also been sought for quashing the impugned bailable warrant order dated 18.10.2025, the impugned summoning order dated 17.02.2025 passed in Complaint Case No. 9669 of 2024 as well as entire proceedings arising out of Complaint Case No. 9669 of 2024.

3. A preliminary objection has been raised by Ms. Priyanka Singh, learned counsel for Opposite Party No.2/Complainant that the present applications under Section 482 Cr.P.C. are not maintainable for the reason that the Applicants had earlier approached this Court by filing an application i.e. **APPLICATION U/s 482 No. 4525 of 2025 in re: OAM Industries (India) Pvt. Ltd. Thru. Kamal Agarwal and Another Vs. State Of U.P. Thru. Its Prin. Secy. Home Sectt. Lko. and Another** which was decided on **28.05.2025** by the co-ordinate Bench of this Court wherein it is observed that after arguing for sometime, learned counsel for the Applicants submits that he does not want to press this petition and seeks liberty to move an application for discharge through counsel before the trial court and the same may be decided by the learned trial Court in a time bound manner. The co-ordinate Bench directed the Applicants to move an appropriate application for discharge through counsel before the concerned Court within a period of fifteen days from

date of order and direction was issued that the trial Court will take decision within a period of two months in accordance with law.

4. Ms. Priyanka Singh, learned counsel for Opposite Party No.2/Complainant has further submitted that the application seeking discharge preferred by the Applicants was rejected on the ground that the application seeking discharge in the complaint case was not maintainable that is why discharge application was rejected.

5. She has further submitted that once the application seeking discharge was rejected as not maintainable, it is not open for the Applicants to move second application challenging the impugned summoning order dated 17.02.2025 and the entire criminal proceedings. She has further submitted that the Applicants had already made aforesaid prayer in the first application i.e. **APPLICATION U/s 482 No. 4525 of 2025**, therefore, the second application is not maintainable in view of the law declared by Hon'ble Supreme Court in the case of **M.C. Ravikumar v. D.S. Velmurugan,** reported in **2025 SCC OnLine SC 1498.** She has relied on paragraphs 11 and 12 of the said judgment.

6. She has further relied on the judgment passed by Hon'ble Supreme Court in the case of **Bhisham Lal Verma v. State of U.P.,** reported in **(2024) 15 SCC 282.**

7. On the other hand, Shri I.B. Singh, Senior Advocate assisted by Shri Ishan Baghel, learned counsel for the Applicants has submitted that the Applicants had earlier filed the application i.e. **APPLICATION U/s 482 No. 4525 of 2025** challenging the impugned summoning order dated 17.02.2025 as well as entire criminal proceedings arising out of Complaint Case No. 9669 of 2024, but the application was withdrawn after argument at length and liberty was sought to move application seeking discharge before the trial court. However, the application seeking discharge was rejected by the trial Court on the ground that the application for discharge in a complaint case is not maintainable.

8. He has further submitted that the Applicants may not be left remediless because the order dated 28.05.2025 indicates that it has not

been passed on merits, rather the application was dismissed as withdrawn to pursue the remedy of seeking discharge.

9. He has further submitted that the Applicants had espoused the cause before this Court by filing the first application and unless the issue is decided, it cannot be said that the subsequent application will bar the Applicants to file another application.

10. He has relied upon the judgment of Hon'ble Supreme Court passed in the case of **Muskan Enterprises and Another Vs. State of Punjab and Another,** reported in **2024 SCC OnLine SC 4107**. He has relied on paragraphs 2, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 of the said judgment.

11. He has also relied on the case of **Bhisham Lal Verma (Supra)** and has argued that the second application is maintainable. Further reliance has also been placed on the judgment of Hon'ble Supreme Court in the case of **Subramanium Sethuraman v. State of Maharashtra,** reported in **(2004) 13 SCC 324**.

12. Sri Rao Narendra Singh, learned A.G.A-I for the State has also submitted that the present application should be treated as second application in view of the fact that earlier the Applicants had challenged the summoning order dated 17.02.2025 as well as the entire criminal proceedings. Now, the second application under Section 482 Cr.P.C. is not maintainable.

13. He has relied on judgments on following judgments passed by this Court :-

(I) **Nitin Tiwari v. State of U.P.,** reported in **2024 SCC OnLine All 146**

(II) **Shailendra Agrawal And Another Vs. State of U.P. and Another (APPLICATION U/S 482 No.24354 of 2023, 2023:AHC:165166)**

(III) **Ram Shanker Singh Vs. State of U.P. and Another,** reported in **2017 SCC OnLine All 4426**

14. Heard Sri I.B.Singh, Senior Advocate assisted by Sri Ishan Baghel, learned counsel for the Applicant, Sri Rao Narendra Singh, learned A.G.A-I for the State and Ms. Priyanka Singh, learned counsel for Opposite Party No.2/Complainant on issue of maintainability of the instant applications.

15. Since the preliminary issue of maintainability has been raised, therefore, this Court proceeds to decide the said issue first on the aforesaid given facts and circumstances.

16. Hon'ble Supreme Court in the case of **Muskan Enterprises and Another (Supra)** has observed that the principle of *res judicata*, traceable in Section 11 of the CPC, does neither apply to criminal proceedings nor is there any provision in the Cr.P.C. akin to Order XXIII Rule 1(3), CPC. While Section 114 of the CPC read with Order XLVII thereof empowers the civil courts to exercise the power of review, Section 362, Cr.P.C. bars a review. A close reading of Sections 482, Cr. P.C. and 115, CPC would also reflect that the purposes sought to be achieved by exercising the high courts' inherent powers, which the respective procedural laws save, are also at variance.

17. Hon'ble Supreme Court has held in the aforesaid case to the extent that the High Court was unjustified in dismissing the subsequent petition on the ground that the appellants had withdrawn the earlier petition without obtaining leave to file afresh. Relevant paragraphs of the report are extracted herein-under :-

> *"6. Imposition of such condition by the Sessions Court for deposit of 20% of the compensation awarded by the trial magistrate was questioned by the appellants before the High Court in a petition (CRM-M-21715-2023) filed under Section 482, Cr. P.C.*
>
> ***7.** The said petition was considered by the High Court on 01st May, 2023, i.e., at a point of time when the decision of this Court in Surinder Singh Deswal @ Col. S. S. Deswal v. Virender Gandhi (2019) 11 SCC 341 was governing the field on interpretation of Section 148 of the N.I. Act. The said decision held the condition for deposit in terms of Section 148, N.I. Act as mandatory.*

8. *Learned counsel appearing for the appellants had argued for some time. However, having found that his arguments would yield no fruitful result since the High Court was bound by the ratio of the decision in Surinder Singh Deswal (supra), he made a statement that the appellants would withdraw the petition. Accordingly, an order was passed to the effect that the petition stands dismissed as withdrawn.*

9. *Close on the heels of dismissal of the said petition of the appellants, as withdrawn, came the decision of another coordinate bench of this Court in Jamboo Bhandari v. Madhya Pradesh State Industrial Development Corporation Ltd. (2023) 10 SCC 446. Upon consideration of the law laid down in Surinder Singh Deswal (supra), the bench in Jamboo Bhandari (supra) proceeded to hold as follows:—*

> *"6. What is held by this Court is that a purposive interpretation should be made of Section 148 of the NI Act. Hence, normally, Appellate Court will be justified in imposing the condition of deposit as provided in Section 148. However, in a case where the Appellate Court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically recorded.*
>
> *7. Therefore, when Appellate Court considers the prayer under Section 389 of the Cr. P.C. of an accused who has been convicted for offence under Section 138 of the N.I. Act, it is always open for the Appellate Court to consider whether it is an exceptional case which warrants grant of suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount. As stated earlier, if the Appellate Court comes to the conclusion that it is an exceptional case, the reasons for coming to the said conclusion must be recorded."*

10. *Having regard to such decision, the appellants applied afresh under Section 482, Cr. P.C. It is this petition which has now been dismissed by the High Court by the impugned order. The sole ground assigned by the High Court is that since the earlier petition had been withdrawn without liberty obtained to apply afresh, the subsequent petition is not maintainable.*

12. *The short question emerging for our decision is whether the High Court was justified in dismissing the subsequent petition under section 482, Cr. P.C. for the reason that it assigned.*

13. *Having considered the materials on record as well as the rival claims, we are of the considered view that the High Court was unjustified in dismissing the subsequent petition on the ground that the appellants had withdrawn the earlier petition without obtaining leave to file afresh and, therefore, the petition under consideration was not maintainable.*

14. *The procedural laws governing criminal proceedings and civil proceedings in our country are quite dissimilar, though the rule of audi alteram partem and a procedure that is both fair and reasonable to both/all parties for rendering justice are at the heart of both the Cr. P.C. and the Civil Procedure Code, 1908. The principle of res judicata, traceable in Section 11 of the CPC, does neither apply to criminal proceedings nor is there any provision in the Cr. P.C. akin to Order XXIII Rule 1(3), CPC. While Section 114 of the CPC read with Order XLVII thereof empowers the civil courts to exercise the power of review, Section 362, Cr. P.C. bars a review. A close reading of Sections 482, Cr. P.C. and 115, CPC would also reflect that the purposes sought to be achieved by exercising the high courts' inherent powers, which the respective procedural laws save, are also at variance. Prudence and propriety in the decision-making process, thus, make it imperative for the high courts to not confuse the procedural laws governing criminal and civil proceedings.*

15. *The legal position as to whether a second petition under Section 482, Cr. P.C. would be maintainable or not is no longer res integra. We may notice a few decisions of this Court on the point.*

16. *In S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla (2007) 4 SCC 70, a decision arising out of the N.I. Act, the relevant high court had given the party the liberty to avail any remedy in law, if available, at the time of withdrawing her petition under section 482, Cr. P.C. This Court, observed that the high court would have the inherent power to decide any successive petition under section 482 and that it is not denuded of that power by the principle of res judicata."*

18. Hon'ble Supreme Court in the case of **Anil Khadkiwala v. State (NCT of Delhi),** reported in **(2019) 17 SCC 294** has also considered the issue of filing the second application under Section 482 Cr.P.C. and has come to the conclusion if there is a change in circumstances then, second application under Section 482 Cr.P.C. is

maintainable. For the sake of convenience, paragraphs 7 and 11 of the report are quoted as under:-

> *"**7.** The complaint filed by Respondent 2 alleges issuance of the cheques by the appellant as Director on 15-2-2001 and 28-2-2001. The appellant in his reply dated 31-8-2001, to the statutory notice, had denied answerability in view of his resignation on 20-1-2001. This fact does not find mention in the complaint. There is no allegation in the complaint that the cheques were post-dated. Even otherwise, the appellant had taken a specific objection in his earlier application under Section 482 CrPC that he had resigned from the Company on 20-1-2001 and which had been accepted. From the tenor of the order of the High Court on the earlier occasion it does not appear that Form 32 issued by the Registrar of Companies was brought on record in support of the resignation. The High Court dismissed the quashing application without considering the contention of the appellant that he had resigned from the post of the Director of the Company prior to the issuance of the cheques and the effect thereof in the facts and circumstances of the case. The High Court in the fresh application under Section 482 CrPC initially was therefore satisfied to issue notice in the matter after noticing the Form 32 certificate. Naturally there was a difference between the earlier application and the subsequent one, inasmuch as the statutory Form 32 did not fall for consideration by the Court earlier. The factum of resignation is not in dispute between the parties. The subsequent application, strictly speaking, therefore cannot be said to a repeat application squarely on the same facts and circumstances.*
>
> ***11.** The Company, of which the appellant was a Director, is a party-respondent in the complaint. The interests of the complainant are therefore adequately protected. In the entirety of the facts and circumstances of the case, we are unable to hold that the second application for quashing of the complaint was not maintainable merely because of the dismissal of the earlier application."*

19. Hon'ble Supreme Court in the case of **Bhisham Lal Verma (Supra)** has held that when the first petition under Section 482 Cr.P.C. was withdrawn with liberty to avail remedies, if any, available in law, the High Court would not be denuded of its inherent jurisdiction under Section 482 Cr.P.C. on being petitioned again and the principle of *res judicata* would not stand attracted. Hon'ble Supreme Court has further

reiterated the law that there can be no blanket rule that a second petition under Section 482 Cr.P.C. would not lie in any situation and it would depend upon the facts and circumstances of the individual case, it is not open to a person aggrieved to raise one plea after the other, by invoking the jurisdiction of the High Court under Section 482 Cr.P.C., though all such pleas were very much available even at the first instance. For the sake of convenience, paragraphs 8, 11 and 12 of the report are extracted herein-under:-

> ***"8.*** *On behalf of the petitioner, Mr Pradeep Kumar Singh Baghel, learned Senior Counsel, would argue that a second petition is maintainable under Section 482CrPC. He relied on the judgment of this Court in State of W.B. v. Mohan Singh [State of W.B. v. Mohan Singh, (1975) 3 SCC 706 : 1975 SCC (Cri) 156] . Therein, it was held that a subsequent application under Section 561-A of the Code of Criminal Procedure, 1898, presently Section 482CrPC, would be maintainable in changed circumstances. It was affirmed that a subsequent application, which is not a repeat application squarely on the same facts and circumstances, would be maintainable. To the same effect was the more recent decision of this Court in Anil Khadkiwala v. State (NCT of Delhi) [Anil Khadkiwala v. State (NCT of Delhi), (2019) 17 SCC 294 : (2020) 3 SCC (Cri) 300] . Earlier, in S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla [S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2007) 4 SCC 70 : (2007) 2 SCC (Cri) 192 : (2007) 136 Comp Cas 268] , this Court held that when the first petition under Section 482CrPC was withdrawn with liberty to avail remedies, if any, available in law, the High Court would not be denuded of its inherent jurisdiction under Section 482CrPC on being petitioned again and the principle of res judicata would not stand attracted. Again, in Vinod Kumar v. Union of India [Vinod Kumar v. Union of India, 2021 SCC OnLine SC 559] , a three-Judge Bench of this Court observed that dismissal of an earlier petition under Section 482CrPC would not bar filing of a subsequent petition thereunder in case the facts so justify.*
>
> ***11.*** *We are in complete agreement with these observations of the Madras High Court. Though it is clear that there can be no blanket rule that a second petition under Section 482CrPC would not lie in any situation and it would depend upon the facts and circumstances of the individual case, it is not open to a person aggrieved to raise one plea after the other, by invoking the jurisdiction of the High Court under Section 482CrPC, though all such pleas*

were very much available even at the first instance. Permitting the filing of successive petitions under Section 482CrPC ignoring this principle would enable an ingenious accused to effectively stall the proceedings against him to suit his own interest and convenience, by filing one petition after another under Section 482CrPC, irrespective of when the cause therefor arose. Such abuse of process cannot be permitted.

12. *In the case on hand, the filing of the charge-sheet and the cognizance thereof by the court concerned were well before the filing of the first petition under Section 482CrPC, wherein challenge was made only to the sanction order. That being so, the petitioner was not at liberty to again invoke the inherent jurisdiction of the High Court in relation to the charge-sheet and the cognizance order at a later point of time. The impugned order [Bhisham Lal Verma v. State of U.P., 2023 SCC OnLine All 2290] passed by the Allahabad High Court holding to this effect is, therefore, incontrovertible on all counts and does not warrant interference."*

20. Hon'ble Supreme Court in the case of **M.C. Ravikumar (Supra)** has held that a second quashing petition under Section 482 Cr.P.C. is not maintainable and its maintainability will depend on the facts and circumstances of each case. However, the onus to show that there arose a change in circumstances warranting entertainment of a subsequent quashing petition would be on the person filing the said petition. For the sake of convenience, paragraphs 4.3 and 13 of the said judgement is quoted below:-

"4.3. *It is alleged that after the receipt of the aforesaid notice, respondent No. 1 executed a sham sale deed in respect of the complainant's property situated at Thanjavur, which was given as security against the loan amount. On coming to know of the said fraudulent transaction, the complainant filed a complaint on 22nd November, 2011 with the Crime Branch, Chennai after procuring orders of the High Court. The said complaint came to be registered as Crime No. 193 of 2012. The police filed closure report in the said case and the same was accepted by Chief Metropolitan Magistrate, Egmore, Chennai vide order dated 23rd September, 2013. The revision petition (Criminal Revision Case (MD) No. 1305 of 2013) filed by the complainant was dismissed by the High Court vide order dated 24th October, 2013 and the special leave petition (Special Leave Petition (Crl.) No. 1042 of 2014)*

against the said order of the High Court was dismissed by this Court vide order dated 7th January, 2015, with an observation that in the event, the complainant chose to pursue appropriate remedies, the observations of the High Court may not prejudice the same. In pursuance of the said order of this Court, the complainant filed yet another Criminal Complaint No. 41 of 2015 before Judicial Magistrate No. 1, Thanjavur against respondent No. 1 and the co-accused persons. However, the quashing petition (Criminal Original Petition (MD) Nos. 13228 of 2015 and 19634 of 2016) filed by respondent No. 1 and other co-accused persons seeking quashing of Criminal Complaint No. 41 of 2015 was allowed by the High Court vide order dated 9th March, 2020.

13. *This Court in catena of judgments has held that it is not open to an accused person to raise one plea after the other, by repeatedly invoking the inherent jurisdiction of the High Court under Section 482 CrPC, though all such pleas were very much available to him even at the first instance. We may hasten to add that there is no sweeping rule to the effect that a second quashing petition under Section 482 CrPC is not maintainable and its maintainability will depend on the facts and circumstances of each case. However, the onus to show that there arose a change in circumstances warranting entertainment of a subsequent quashing petition would be on the person filing the said petition. In this regard, we may gainfully refer to the observations made by this Court in the case of Bhisham Lal Verma v. State of UP, 2023 SCC OnLine SC 1399, which are extracted below for ready reference:—*

> *"**11.** …… Though it is clear that there can be no blanket rule that a second petition under Section 482 Cr. P.C. would not lie in any situation and it would depend upon the facts and circumstances of the individual case, **it is not open to a person aggrieved to raise one plea after the other, by invoking the jurisdiction of the High Court under Section 482 Cr. P.C., though all such pleas were very much available even at the first instance. Permitting the filing of successive petitions under Section 482 Cr. P.C. ignoring this principle would enable an ingenious accused to effectively stall the proceedings against him to suit his own interest and convenience, by filing one petition after another under Section 482 Cr. P.C., irrespective of when the cause therefor arose. Such abuse of process cannot be permitted.**"*

(Emphasis Supplied)"

21. After going through the records, it is apparent that the Applicants had earlier challenged the impugned summoning order as well as the entire proceedings of Complaint Case No. 9669 of 2024 in earlier application i.e. **APPLICATION U/s 482 No. 4525 of 2025** before this Court, and this Court permitted the Applicants to withdraw the said application and to move application seeking discharge through counsel before the trial Court. The Applicants, in pursuance of the direction dated 28.05.2025, filed an application seeking discharge, but the same was rejected by the trial Court on the ground that it was not maintainable and seeking discharge could not have been heard by the trial Court in complaint cases. The Applicants have filed the present applications challenging the impugned summoning order as well as the entire criminal proceedings, which were challenged by them earlier. It is evident that the Applicants were relegated to the trial Court to avail the remedy of moving application seeking discharge, however, the said remedy is legally not maintainable, therefore, merit of the case was not decided. The cause which they espoused was not looked into, and no order on merit was passed. Since the application seeking discharge was rejected on the ground of maintainability, it is a changed circumstance, and the second application under Section 482 Cr.P.C. is maintainable in view of the law declared by the Supreme Court in the case of **Muskan Enterprises and Another (Supra), Anil Khadkiwala (Supra)** and **Bhisham Lal Verma (Supra).** It is held that the present second application under Section 482 Cr.P.C. filed is maintainable.

22. Now this Court proceeds to decide the applications under Section 482 Cr.P.C. on merits.

23. Brief facts of the case, in nut shell, are that Applicant/Kamal Agrawal of **APPLICATION U/s 482 No. 9706 of 2025** is the Managing Director (M.D.) of OAM Industries (India) Private Limited (in short "Company"), having its registered office at 880, Haldiram House, Small Factory Area, Bhandara Road, Nagpur, Maharashtra. The Company is

incorporated under Companies Act with its Head Office at Nagpur, Maharashtra. The Company is manufacturer of different kinds of sweets, bakery and industrial kitchen products. It has a chain of restaurants and sweet Shops throughout India. So far as the Applicant/Satya Prakash Tiwari of **APPLICATION U/s 482 No. 9802 of 2025** is concerned, he is the General Manager H.R. (G.M.-HR) in the Company.

24. It has been submitted by Shri I.B. Singh, Senior Advocate assisted by Shri Ishan Baghel, learned counsel for the Applicants that the Company and its directors are both separate entities. In the complaint, only the Company was made as an accused through its Managing Director Shri Kamal Agrawal. The Applicant/Kamal Agrawal, Managing Director of the Company and the Applicant/Satya Prakash Tiwari, General Manager H.R. were never made as an accused in the complaint in their personal capacities, however, the trial Court has summoned the Applicants in their personal capacity.

25. It has been further submitted that the Opposite Party No. 2/Complainant namely Sri Shadab Ahmad S/o Aziz Ahmad had been the employee of the Company and the appointment was given to the Opposite Party No. 2/Complainant with effect from 14.05.2022. The Opposite Party No. 2/Complainant went on leave from 23.05.2023 to 29.05.2023 but without disclosing the same to the higher authorities and without approval of his leave for the aforesaid period.

26. It has been further submitted that the Opposite Party No. 2/Complainant acted to the extent that through one of his colleagues he managed to mark his presence in the Office from 23.05.2023 to 29.05.2023. He also committed breach of trust, submitting false document, misusing his authority; the Opposite Party No. 2/Complainant was issued a Show Cause Notice dated 26.07.2023 was issued through Senior Executive-Human Resources of the Company and he, vide his email dated 27.07.2023, sent his reply in a very casual manner. The Opposite Party No. 2/Complainant admitted that he was not having the knowledge of getting the approval of leave, if taken without prior

approval and, therefore, he marked his presence from 23.05.2023 to 29.05.2023 through one of his colleagues, manually. The email dated 27.07.2023 of the Opposite Party No. 2/Complainant is extracted herein-under :-

> *"Subject: FW: Show Cause Notice*
> *From: <ankita.gadhikar@haldirams.corm>*
> *Date: 8/11/2023, 6:25 PM*
> *To: <satya.tiwari@haldirams.com>*
>
> *fyl*
>
> *From: Atif Ahmad <frave1989@gmail.com>*
> *Sent: Thursday, July 27, 2023 1:12 PM*
> *To: ankita.gadhikar@haldirams.co*
> *Cc: satya.Hwarl@haldirams.com*
> *Subject: Re: Show Cause Notice*
>
> *Dear Mam,*
>
> *It was done by Mistake, I don't have too much time because of month end and I am not aware of Zing HR portal, that time I have already 15 days of PL and I don't have knowledge how can I mark my PL In Zing HR.*
>
> *Thanks*
>
> *Shadab"*

27. It has been further submitted that the Opposite Party No. 2/Complainant discontinued his services with effect from 31.07.2023 without any information to the Company. the company issued a letter dated 11.08.2023, wherein it was stated that he had not reported on duty since 31.07.2023 and without any sanctioned leave he has absconded from his duties. It was further mentioned that as to why the disciplinary action be not initiated against him and why he is on unauthorized absence from 31.07.2023 and further, it was provided that within 72 hours in case he fails to join the duty it will be presumed that he has absconded from services and the Company will be free to terminate his services.

28. It has been further submitted that in the month of September 2023, the Opposite Party No. 2/Complainant sent his resignation letter

through e-mail dated 20.09.2023 at 02:57 p.m.. All the dues of the Opposite Party No. 2/Complainant were duly settled by the Company by paying him his entire dues, as follows :-

a) July salary

For No. of days worked: ₹ 13,321.00

b) Bonus: ₹ 13,480.00

c) Leave encashment of 16 days: ₹ 19,735.00

d) Salary of one month notice: ₹ 35,000.00

e) Deduction of advance received: ₹ 23,000.00

Thus, total amount paid is ₹(81,534-23000) = ₹ 58,534.00

Thus total amount of ₹ 58,534/ was paid to the Opposite Party No. 2/Complainant vide cheque No. 604165 dated 23.09.2023 (H.D.F.C. Bank).

29. It has been further submitted that the Opposite Party No. 2/Complainant replied to the aforesaid letter dated 11.08.2023, vide his email dated. 17.08.2023 at 05:38 p.m.. the Opposite Party No. 2/Complainant had mentioned that due to some medical emergency he had taken leave from 23.05.2023 to 29.05.2023 and further he stated that he had gone on leave from 01.08.2023 again due to some medical emergency, therefore, no false document has been submitted by him nor any loss occurred to the Company.

30. It has been further submitted that the Opposite Party No. 2/Complainant sent a legal notice on 20.10.2023 for the payment of the alleged amount/dues of ₹ 1,08,774/-. However, the said legal notice was specifically denied vide reply dated 25.10.2023 stating that all his dues has been settled and ₹ 58,534/ was paid to him as full and final. The Opposite Party No. 2/Complainant again sent legal notice on 22.12.2023 for the payment of alleged amount/dues of ₹ 38,919/- and medical expenses of ₹ 72,800/-, amounting to ₹ 1,11,719/-. The said legal notice was specifically denied vide reply dated 01.01.2024.

31. It has been further submitted that after the aforesaid developments regarding grievances of his service dispute, he filed a

complaint on 06.02.2024 before the Chief Judicial Magistrate, Lucknow based upon bald allegation which was never reported/raised before filing of the said complaint case. After filing of the complaint and after recording the statement of the Opposite Party No. 2/Complainant under Section 200 Cr.P.C and the statements of his wife/Smt. Ayesha Khan and sister-in-law/Ms. Humaira Khan under Section 202 Cr.P.C., the Applicants have been summoned by the trial Court to face trial for the offense under Section 500 IPC.

32. It has been further submitted that two show cause notices dated 26.07.2023 and 11.08.2023 against the Opposite Party No. 2/Complainant indicate that he was not reporting on duty since 31.07.2023 and without authorized leave, he was staying at his home. He was paid his wages of ₹ 58,534,00 through cheque No. 604165 dated 23.09.2023 (H.D.F.C. Bank). Thereafter, he had given a legal notice on 20.10.2023 in which he demanded ₹ 1,08,774/-. The aforesaid factual aspects clearly indicate that there is service dispute between the Opposite Party No. 2/Complainant and the Company for which he could have approached appropriate forum but he has filed a complaint on wrong legal premises that the word “Absconding” has been used which is defamatory.

33. It has been submitted by Shri I.B. Singh, Senior Advocate assisted by Shri Ishan Baghel, learned counsel for the Applicants that the Opposite Party No. 2/Complainant himself has admitted in the email dated 27.07.2023, extracted above, that due to mistake, he got his presence done in the Office record from 23.05.2023 to 29.05.2023 and he himself has admitted that he could not present himself in the Office for the reason that he was suffering from illness; thus, the Company of the Applicants had sent notice mentioning therein that he was absconding from the duty. Once he was staying at his home unauthorisedly certainly, the Company had to give information that he was absconding from duty and the Company has admittedly issued the letter that he was absconding from the duty.

34 Learned counsel for the Applicants has submitted that absconding has been defined in different dictionaries, which are as under :-

a. Cambridge Dictionary :- to go away suddenly and secretly in order to escape from somewhere.

b. Merriam Webster Dictionary :- to depart secretly and hide oneself.

c. Collins Dictionary :- the act of running away from an open institution or avoiding prosecution or punishment.

d. Oxford Learner's Dictionary :- abscond (from something) to escape from a place that you are not allowed to leave without permission.

e. The Britannica Dictionary :- to go away or escape from a place secretly.

35. It has been submitted that allegations made in the complaint are not only improbable in nature but also privileged under Seventh Exception as mentioned in Section 499 IPC is as such no prudent person can reach to such conclusion as alleged by the complainant in his complaint. The Seventh Exception of Section 499 IPC is extracted herein-under :-

> *"Seventh Exception.— Censure passed in good faith by person having lawful authority over another.— It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.*
>
> *Illustration*
>
> *A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a school-master, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception."*

36. It has been further submitted that proceedings have been instituted out of malice. Record goes to indicate that prior to filing of the complaint, the Company had issued to show cause notices to know as to why the Opposite Party No. 2/Complainant was living at his house without sanctioned leave. The Company had issued letter that he was absconding from duty for the reason that no leave was sanctioned. Once the show cause notices were given prior to filing of the complaint, the present complaint is just to take revenge of the action taken by the Applicants. The Opposite Party No. 2/Complainant was demanding money illegally mentioning that the Company is in obligation to pay dues whereas full and final payment was made to the Opposite Party No. 2/Complainant. The Opposite Party No. 2/Complainant could have approached before the appropriate forum to raise his service grievances but he filed a criminal complaint case against the Applicants just to settle his personal score.

37. Learned counsel for the Applicants has placed reliance on the judgment passed by Hon'ble Apex Court in the case of **State of Haryana v. Bhajan Lal,** reported in **1992 Supp (1) SCC 335** wherein in paragraph 102.7 it has been held 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 can be quashed.

38. Paragraph 102 of **Bhajan Lal (Supra)** is extracted herein-below:-

> *"**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 have given 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 private and personal grudge."

39. Learned counsel for the Applicants has also placed reliance on the judgment passed by Hon'ble Apex Court in the case of **Pepsi Foods Ltd. v. Judicial Magistrate,** reported in **(1998) 5 SCC 749.** The relevant paras of the report is extracted herein-under :-

"28. *Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.*

29. *No doubt the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial. It was submitted before us on behalf of the State that in case we find that the High Court failed to exercise its jurisdiction the matter should be remanded back to it to consider if the complaint and the evidence on record did not make out any case against the appellants. If, however, we refer to the impugned judgment of the High Court it has come to the conclusion, though without referring to any material on record, that "in the present case it cannot be said at this stage that the allegations in the complaint are so absurd and inherently improbable on the basis of which no prudent man can ever reach a just conclusion that there exists no sufficient ground for proceedings against the accused". We do not think that the High Court was correct in coming to such a conclusion and in coming to that it has also foreclosed the matter for the Magistrate as well, as the Magistrate will not give any different conclusion on an application filed under Section 245 of the Code. The High Court says that the appellants could very well appear before the court and move an application under Section 245(2) of the Code and that the Magistrate could discharge them if he found the charge to be groundless and at the same time it has itself returned the finding that there are sufficient grounds for proceeding against*

the appellants. If we now refer to the facts of the case before us it is clear to us that not only that allegation against the appellants do not make out any case for an offence under Section 7 of the Act and also that there is no basis for the complainant to make such allegations. The allegations in the complaint merely show that the appellants have given their brand name to "Residency Foods and Beverages Ltd." for bottling the beverage "Lehar Pepsi". The complaint does not show what is the role of the appellants in the manufacture of the beverage which is said to be adulterated. The only allegation is that the appellants are the manufacturers of bottle. There is no averment as to how the complainant could say so and also if the appellants manufactured the alleged bottle or its contents. His sole information is from A.K. Jain who is impleaded as Accused 3. The preliminary evidence on which the first respondent relied in issuing summons to the appellants also does not show as to how it could be said that the appellants are manufacturers of either the bottle or the beverage or both. There is another aspect of the matter. The Central Government in the exercise of their powers under Section 3 of the Essential Commodities Act, 1955 made the Fruit Products Order, 1955 (for short "the Fruit Order"). It is not disputed that the beverage in question is a "fruit product" within the meaning of clause (2)(b) of the Fruit Order and that for the manufacture thereof certain licence is required. The Fruit Order defines the manufacturer and also sets out as to what the manufacturer is required to do in regard to the packaging, marking and labelling of containers of fruit products. One of such requirements is that when a bottle is used in packing any fruit products, it shall be so sealed that it cannot be opened without destroying the licence number and the special identification mark of the manufacturer to be displayed on the top or neck of the bottle. The licence number of the manufacturer shall also be exhibited prominently on the side label on such bottle [clause (8)(1)(b)]. Admittedly, the name of the first appellant is not mentioned as a manufacturer on the top cap of the bottle. It is not necessary to refer in detail to other requirements of the Fruit Order and the consequences of infringement of the Order and to the penalty to which the manufacturer would be exposed under the provisions of the Essential Commodities Act, 1955. We may, however, note that in Hamdard Dawakhana (Wakf) v. Union of India [AIR 1965 SC 1167 : (1965) 2 SCR 192] an argument was raised that the Fruit Order was invalid because its provision indicated that it was an Order which could have been appropriately issued under the Prevention of Food Adulteration Act, 1954. This Court negatived this plea and said that the Fruit Order was validly

issued under the Essential Commodities Act. What we find in the present case is that there was nothing on record to show if the appellants held the licence for the manufacture of the offending beverage and if, as noted above, the first appellant was the manufacturer thereof."

40. On the basis of aforesaid submissions, learned counsel for the Applicants states that the applications under Section 482 Cr.P.C. are liable to be allowed and the impugned orders as well as criminal proceedings against the Applicants are liable to be set aside/quashed.

41. On the other hand, Ms. Priyanka Singh, Advocate has submitted on behalf of the Opposite Party No.2/Complainant that the word "absconding" is offending, in the show cause notice issued to the Opposite Party No.2/Complainant. The reputation of Opposite Party No.2/Complainant has been tarnished as his wife and sister-in-law read the letter of show cause notice issued by the Company.

42. Ms. Priyanka Singh, Advocate has placed on reliance on the judgment of this Court passed in the case of **Prabhanshu Shrivastava v. State of U.P.,** reported in **2024 SCC OnLine All 7228.** She has relied on paragraph 17 of the judgment.

43. It has further been submitted that once the statement of Opposite Party No.2/Complainant under Section 200 Cr.P.C. as well as the statements of the witnesses under 202 Cr.P.C. have been examined by the trial Court and after going through the records if the summons have been issued, then the satisfaction is based on material evidences and this Court cannot interfere in the impugned summoning order under Section 482 Cr.P.C..

44. It has been further submitted that this Court cannot weigh the evidences and cannot do trial, therefore, the applications under Section 482 Cr.P.C. filed by the Applicants are liable to be rejected.

45. After going through the judgment passed by this Court in the case of **Prabhanshu Shrivastava (Supra),** it is evident that in the aforesaid case, stigma has been cast upon the petitioner/Prabhanshu Shrivastava to the extent that he has been held to have absconded from

service and due to his absence from service the public at large has been deprived of his services.

46. The fact of the aforesaid case indicates that the petitioner had appeared for the MDS exam for post-graduate education in the Speciality of Pedodontics and Preventive Dentistry on 14.12.2018 and he was selected in the post-graduate course and had taken admission in the Government Dental College and Hospital, Nagpur, Maharashtra. The result of the recruitment for the post of Dental Surgeon under the Medical Health and Child Welfare, U.P., were not declared till the petitioner was admitted and joined in 2019 for the post-graduate course and it is only in 2020 that the results were declared and he was selected on the post of Dental Surgeon under the Medical Health and Child Welfare, U.P. It is in the aforesaid circumstances that the petitioner made an application to the Department of Medical and Health for grant of study-leave. The respondent did not consider application for grant of study-leave, consequently, he was constrained to file a Writ Petition No. 13652 of 2020, Santoshni Samal & anr. v. State of U.P. & 2 ors., which was disposed of by this court with a direction to the opp. parties to pass appropriate order on the representation of the petitioner, by means of order dated 15.03.2021. The respondents duly considered the representation of the petitioner and rejected the same on the ground that the petitioner was a Probationer and was not entitled for the study-leave. The petitioner being aggrieved by the order of rejection dated 22.07.2021 filed another writ petition before this court being Writ Petition No. 22235 of 2021(SS) titled as Dr. Prabhanshu Srivastava v. State of U.P., on which notices were issued and it was pending consideration before this court. It is during pendency of the aforesaid writ petition that on 20.12.2021 the petitioner went to join his services at the place of posting on 30.12.2021, but he was informed that his services had already been terminated by means of the impugned order dated 30.11.2021, however, a perusal of the impugned order indicates that the petitioner had already joined on 10.10.2020 and from the very next date

he had proceeded on leave and it is for his unauthorized absence that his services have been terminated.

47. The fact as stated of Dr. Prabhanshu Shrivastava is totally inapplicable in the present case, which is a criminal complaint case. The said case which pertains to the service law cannot be made applicable in the present case of criminal complaint case. Otherwise, the fact of the aforesaid case is also quite different.

48. After going through the records as well as the arguments by rival parties, it is borne out from the facts of the case that two show cause notices dated 26.07.2023 and 11.08.2023 were issued to Opposite Party No.2/Complainant, wherein it is indicated that he had not reported on duty, therefore, he was absconding. The word “absconding” does not lower down the image of the Opposite Party No.2/Complainant for the simple reason that it is admitted on record that he was not on sanctioned leave accorded by the Company and letter was sent by the Company that he was absconding, therefore, he was directed to join the duty. The record further indicates that he had given two legal notices to the Company asking his dues. In case dues are not paid, it was incumbent upon Opposite Party No.2/Complainant to raise his service grievance before the appropriate forum but he did not adopt the recourse to meet out his grievances or service dispute, rather he filed criminal complaint case which appears to be malafide out of malice just to settle his personal score which is deprecated by Hon'ble Supreme Court in the case of **Bhajan Lal (Supra)**. The Hon'ble Supreme Court in the case of **Pepsi Foods Ltd. (Supra)** has held that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. The Magistrate has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof. The Magistrate is not a silent spectator at the time of recording of preliminary evidence before summoning of the accused.

49. Dictionary meaning of “absconding” also indicates various suggestions. Cambridge Dictionary indicates “to go away suddenly and secretly in order to escape from somewhere”. Oxford Learner’s Dictionary defines the meaning of “abscond” to the extent that abscond (from something) to escape from a place that you are not allowed to leave without permission.

50. The aforesaid meaning also suggest that the Company had used the word “absconding” in show cause notice issued to Opposite Party No.2/Complainant who did not join the duty for a longtime. At the most, the Opposite Party No.2/Complainant could have approached the appropriate forum to settle his service dispute.

51. Considering the aforesaid, the applications i.e. **APPLICATION U/s 482 No. 9706 of 2025** and **APPLICATION U/s 482 No. 9802 of 2025** are **allowed**. The impugned orders dated 06.09.2025, 18.10.2025 and 17.02.2025 are set aside. The entire proceedings arising out of Complaint Case No. 9669 of 2024 pending before the trial Court are quashed qua the Applicants namely Kamal Agrawal and Satya Prakash Tiwari.

52. Office is directed to communicate this judgment to the trial Court for information and necessary compliance forthwith.

(Brij Raj Singh,J.)

November 27, 2025
Mohit **S**ingh/-