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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CRM-M No.1963 of 2024 (O&M)
Date of Decision: 19.05.2025**

Chaman Lal Kanda and another ... Petitioners

Versus

State of Punjab ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Manmeet Singh Rana, Advocate,
for the petitioners.

Ms. Himani Arora, AAG, Punjab,
for the respondent-State.

Mr. Sapan Dhir, Advocate,
for Ms. Pooja Kanda (through Video Conferencing).

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioners under Section 482 of Cr.P.C. seeking quashing of FIR No.178 dated 07.09.2023 registered under Sections 212 and 216 of IPC at Police Station City Phagwara, District Kapurthala and the proceedings having emanated therefrom.

2. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of a complaint lodged by Inspector Jarnail Singh posted at CIA Staff, Kapurthala alleging that on 07.09.2023, he had gone to the house of

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Harish Kanda son of the petitioner No.1 for executing warrant issued by the Court of Chief Judicial Magistrate, Kapurthala in a petition bearing No.931 of 2023 titled as Pooja Kanda v. Harish Kanda. On reaching there, the petitioners met the complainant and were apprised about the order passed by the Court. They were asked to produce Harish Kanda in the concerned Court in pursuance of the warrants. The petitioners, however, represented that they had no knowledge about Harish Kanda nor he was at home. The complainant alleged that he had made inquiries and received a secret information that Harish Kanda quite often used to come to the house of the petitioners during odd hours and his shelter, food and other expenses were arranged by the petitioners who were fully aware about his activities. By alleging that the petitioners were harbouring Harish Kanda, he prayed for taking action against them. After registration of FIR, investigation proceedings were initiated. The petitioners were arrested and presently, they are on bail. Investigation now stands concluded.

3. It is argued by learned counsel for the petitioners that they have been falsely implicated in his case. Infact, there was matrimonial discord between Harish Kanda, son of petitioner No.1 and his wife Pooja Kanda who were married on 29.08.2006. Pooja Kanda had lodged an FIR No.48 dated 26.08.2012, registered under Sections 406 and 498-A of IPC at Police Station Women Cell, Jalandhar against the petitioner No.1, his wife Chanchal Kanda (since deceased) and son Harish Kanda. The petitioner No.1 faced trial in that case and was acquitted vide judgment dated

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18.03.2023. He was not in contact with his son Harish Kanda who had started living separately since December 2017. The petitioner No.1 was residing alone in his hosue. The petitioner No.2, second son of petitioner No.1 was residing separately with his family. They had no knowledge about the whereabouts of Harish Kanda nor they had any concern with him since he had not been residing in the house of the petitioner No.1 from the last many years. The ingredients for commission of offences punishable under Sections 212 and 216 of IPC have not at all been attracted against them. The criminal proceedings have been initiated only to abuse the process of law. The allegations, even if accepted to be correct on the face of record, do not make out any case for commission of offences for which they have been booked and challaned. There are no chances of conviction of the accused. With these broad submissions, it is urged that the petition deserves to be allowed and the impugned FIR along with all the subsequent proceedings is liable to be quashed.

4. Status report has been filed by the respondent-State. Learned Assistant Advocate General, Punjab assisted by learned counsel for the complainant has argued that thorough and proper investigatoin was conducted on the allegations as levelled in the FIR. A prima facie case for commission of aforementioned offences has been made out. The investigation stands concluded. There is no exceptional or sparing circumstance to quash the impugned FIR in view of the specific allegations levelled against the petitioners in the FIR as well as in the challan report. It

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is not a fit case for exercising powers under Section 482 of Cr.P.C.. With these assertions, it is stressed that the petition does not deserve to be allowed.

5. Ms. Pooja Kanda wife of Harish Kanda moved an application for placing on record some documents. Though this application had been allowed and some documents were produced on record by her, however, since she is neither a party to the petition nor the complainant in the FIR nor it is the version of the respondent-State that the documents placed by her on record were also produced during investigation and are part of the challan report, therefore, this Court is of the considered opinion that these documents are not required to be taken into consideration.

6. Rival submissions made by both the parties have been heard at length.

7. At the outset, I deem it appropriate to consider the scope of interference in the FIR that has been filed against the petitioners. An accused certainly can approach High Court under Section 482 Cr.P.C. (*which is pari materia with Section 528 of BNSS, 2023*) or under Article 227 of the Constitution of India to have the proceedings quashed against him, when the complaint does not make out any case against him. Hon'ble Supreme Court has laid down broad principles of law relating to exercise of extraordinary power under Article 226 of the Constitution of India to quash the FIR/Challan report in a celebrated judgment cited as ***State of Haryana vs. Bhajan Lal and others, 1991 (1) RCR (Criminal) 383***, wherein it has been

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held that the power to quash an FIR/chargesheet can be exercised either to prevent abuse of process of Court or otherwise to secure the ends of justice. The following categories of cases have been detailed, wherein such powers can 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 F.I.R. 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 F.I.R. 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 F.I.R. 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

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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.

8. The principles of law as laid down by Hon'ble Supreme Court in *Bhajan Lal's* case (supra) have been followed in a catena of judgments. In *Paramjeet Batra vs. State of Uttarakhand, (2013) 11 SCC 673*, it was observed by Hon'ble Supreme Court that although the inherent powers of a High Court under Section 482 of the Code should be exercised sparingly and only for the purpose of preventing abuse of process of any Court or otherwise to secure ends of justice, yet, the High Court must not hesitate in quashing such criminal proceedings, where essential ingredients of the offence are not made out. In *Randheer Singh vs. State of Uttar Pradesh, (2021) 14 SCC 626*, it was observed by Hon'ble Supreme Court that criminal proceedings cannot be taken recourse to as a weapon of harassment.

9. Reference can further be made to *Gian Singh vs. State of Punjab, (2012) 10 SCC 303*, wherein Hon'ble Supreme Court observed that the power of the High Court in quashing a criminal complaint or an FIR, in exercise of its inherent jurisdiction, is distinct and different from the power

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given to a criminal court for compounding the offences under [Section 320](#) of the Code. Inherent power is of wide plentitude with no statutory limitation but it has to be exercised in accordance with the guidelines engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court.

10. Reference can also be made to *Narinder Singh and Ors. Vs. State of Punjab : (2014) 6 SCC 466*, wherein it was by Hon'ble Supreme Court that while exercising power under Section 482 of Cr.P.C., the High Court has to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal case would put him into great oppression and prejudice and injustice would be caused to him by not quashing criminal case.

11. In *Dhruvaram Murlidhar Sonar vs. State of Maharashtra : 2019 (18) SCC 191*, Hon'ble Supreme Court, while reiterating the parameters as laid down in *Bhajan Lal's* case (supra), had observed that for quashing of the proceedings, meticulous analysis of factum of taking cognizance of an offence by the Magistrate was not called for. Appreciation of evidence was also not permissible in exercise of inherent powers. If the allegations set out in the complaint did not constitute the offence of which cognizance has been taken, it is open to the High Court to quash the same in exercise of its inherent powers.

12. In *Neeharika Infrastructure vs. State of Maharashtra : 2021 SCC OnLine SC 315*, the Hon'ble Apex Court observed that while the

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Courts ought to be cautious in exercising powers under Section 482 of Cr.P.C., they do have power to quash. The test is whether or not the allegations in the FIR disclose the commission of a cognizable offence? The merits of the allegations are not to be entered into nor the power of the investigating agency to investigate into allegations involving the commission of a cognizable offence is to be trenched upon.

13. Keeping in mind the abovementioned principles of law, let us consider as to whether in the instant case, there is any scope of interference for this Court for quashing of FIR and the consequent proceedings as initiated against the petitioners.

14. The petitioners have been booked for commission of offences punishable under Sections 212 and 216 of IPC on the allegations that they had harboured Harish Kanda against whom warrant of arrest had been ordered to be issued in a petition filed by his wife. Section 212 of IPC provides for commission of offence for **harbouring** an offender. A plain reading of Section 212 of IPC would show that for convicting a person under this section, the following essential ingredients must be established:-

- (i) there must be an offender who has actually committed an offence;
- (ii) there must be harbouring or concealment of a person by the accused;
- (iii) the accused knows or has reason to believe that such harboured or concealed person was the offender;

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(iv) there must be an intention on the part of the accused to screen the offender from the legal punishment.

15. It is clear from the above that before convicting a person for committing offence under Section 212 of IPC for harbouring or concealment, it must be proved that an offence has been committed and upon proving the same, the prosecution is required to show that there is harbouring or concealment by the accused or the accused has reason to believe such person to be an offender. Section 216 of IPC provides punishment for harbouring an offender whose apprehension has been ordered and who has escaped from custody. It is as such explicit that harbouring or concealing an offender is a necessary ingredient of the offences under Sections 212 and 216 of IPC.

16. So far as the word “**harbour**” is concerned, it is defined in Section 52A of the IPC as follows:-

“Except in section 157, and in section 130 in the case in which the harbour is given by the wife or husband of the person harboured, the word “harbour” includes supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means or conveyance, or assisting a person by any means, whether of the same kind as those enumerated in this section or not, to evade apprehension.”

The word 'harbour' is defined as follows in Law Lexicon of P. Ramanatha Aiyer, Second edition :

"In construing a statute making the harbouring or concealing of an offender a crime, it was said that the word 'harbour' is

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defined by Worcester 'To entertain; to shelter; to rescue; to receive clandestinely and without lawful authority'.

17. The word “**harbouring**” is defined as follows :

“**Harbouring**” means a fraudulent concealment, and hence, where slaves or prisoners ran away, and were found in the possession of defendant, who openly maintained them, and gave notice to plaintiff that he would do so until they were recovered by law there was no harbouring.”

In the Webster Dictionary the word “harboured” is defined as under:-

“To shelter; to rescue; to secure; to secrete, as to harbour a thief. The word in statute only applies when the person is harboured or concealed with knowledge that he is an offender.”

18. To attract the provisions of Section 212 of IPC, it is necessary to establish commission of an offence of harbouring or concealing the person known or believed to be an offender and such harbouring etc. must be with the intention of screening the offender from legal punishment or to avoid his apprehension. However, before a person can be held guilty as an accessory, it must be shown that he expressly or impliedly assisted the offender. Mere knowledge of the whereabouts of an offender does not amount to harbouring unless the accused has done something to help the offender to evade apprehension.

19. Let us now consider the question as to whether the offences under Sections 212 and 216 IPC have been made out as against the petitioners in view of the allegations as levelled in the FIR. As per the

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allegations, the petitioners are father and brother respectively of Harish Kanda who had been declared a proclaimed offender in a case bearing FIR No.48 and against whom warrant of arrest had been issued in a petition filed by his wife Pooja Handa and they were harbouring him. There is no dispute about the fact that Harish Kanda had been held guilty and convicted in the aforementioned FIR. He had filed an appeal and thereafter he absconded. In pursuance of a petition filed by his wife, warrant of arrest were issued against him which were sought to be executed through the complainant who is a police official and on whose complaint, the FIR was lodged. The respondent has relied upon three circumstances to connect the petitioner No.1 with the allegations of harbouring his son Harish Kanda. These circumstances are as follows:-

(i) In the year 2019, Harish Kanda had applied for renewal of his passport and in the relevant documents, he had mentioned his address to be the same as that of the petitioner No.1 and this fact stands reflected from the document of verification of passport (Annexure R-1).

(ii) Entries in statement of bank account jointly in the name of the petitioner No.1 and Harish Kanda (Annexure R-2).

(iii) Closure of loan account in the name of Harish Kanda on 16.12.2023 (Annexure R-3).

20. Learned Assistant Advocate General, Punjab while drawing the

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attention of this Court to the Annexures R-1 to R-3 has stressed that these documents show that the petitioner No.1 had been helping Harish Kanda and had managed his absconding. However, on going through these documents, this Court is of the considered opinion that they are not at all sufficient to infer that there was any harbouring on the part of the petitioner No.1. Annexure R-1 is an information extracted from the passport office showing that Harish Kanda had applied for reissuance of his passport which was so issued in his name on 18.06.2019 and at that time, his address was shown to be the same of as the address of petitioner No.1. Harish Kanda was declared a proclaimed offender in a case in the year 2023. As on 18.06.2019, he was facing trial and there is nothing on record to show that he had been avoiding appearance and the petitioner No.1 assisted him in any manner at that point of time. By mentioning of the same address in the year 2019, in the opinion of this Court, no inference as to rendering any assistance for facilitating Harish Kanda to abscond, on the part of the petitioner No.1 can be drawn.

21. Similarly, so far as the document Annexure R-2 is concerned, the same simply shows that the petitioner No.1 and Harish Kanda were joint holders of a bank account. However, this document shows transaction during the year 2007-2008 only. From this document also, no conclusion can be drawn that the petitioner No.1 had been assisting his son in any manner, or had been financially supporting him in the year 2023 or afterwards. As such, this document is also not serving any purpose.

22. Then so far as Annexure R-3 is concerned, it shows that a loan

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account in the name of Harish Kanda had been closed as on 16.12.2023. This statement of account does not show that any payment had been made by the petitioners in this bank account at any point of time and, therefore, from this document also, it cannot be stated that the petitioner No.1 had been helping his absconding son in any manner whatsoever.

23. In view of the above discussion, the position which emerges is that there is no material on record to show that the petitioner No.1 was either harbouring or concealing his son or had taken any steps for saving him from legal punishment or had provided any shelter to him. As such, this Court is of the opinion that the prosecution of the petitioner No.1 for commission of the aforementioned offences would be nothing but an abuse of process of law.

24. So far as the present petitioner No.2 is concerned, the allegations against him are even more vague and general. He appears to have been implicated in this case only due to his being brother of Harish Kanda. Neither in the status report filed by the respondent-State, it has been mentioned nor during the course of arguments, it could be pointed out as to how and in what manner, this petitioner had harboured his brother Harish Kanda. The well settled proposition of law is that simple denial of the whereabouts of an offender by his family members does not amount to harbouring such family member. The prosecution was required to show that the petitioners expressly or impliedly assisted the main offender Harish Kanda but nothing of that sort has been brought on record and as such, the

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petitioners cannot be held responsible as accessories after the fact.

25. As a fallout and consequence of the above stated legal analysis and in view of the peculiar facts and circumstances of the case, it is held that the instant one is a fit case for exercising inherent powers of this Court under Section 482 of Cr.P.C. to do real and substantial justice as the continuation of criminal proceedings against the petitioners would amount to abuse of process of law. Accordingly, the present petition is allowed and the FIR No.178 dated 07.09.2023 registered under Sections 212 and 216 of IPC at Police Station City Phagwara, District Kapurthala as registered against the petitioners and all the proceedings having emanated therefrom are hereby ordered to be quashed.

26. Miscellaneous application(s), if any, also stand disposed of.

27. This order shall come into force from the time it is uploaded on this Court's official webpage.

19.05.2025
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes