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

1. CRM-M-60194-2024 (O&M)

Jal Karan **...Petitioner**

Versus

State of Haryana **...Respondent**

2. CRM-M-60213-2024 (O&M)

Neeti **...Petitioner**

Versus

State of Haryana **...Respondent**

Reserved on : 25.02.2025
Pronounced on : 28.02.2025

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sandeep Singh Sangwan, Advocate
for the petitioners.

Mr. Apoorv Garg, Senior Deputy Advocate General, Haryana.

MANISHA BATRA, J.

1. This common order shall dispose of above mentioned two petitions as they are similar in nature and have been filed with identical prayers.

2. These petitions have been filed by the petitioners under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) for quashing of FIR No. 0024 dated 18.01.2023 (Annexure P-1), registered under Sections 409 and 420 of IPC at Police Station Barauda, District Sonipat, along with all the subsequent proceedings having emanated therefrom.

3. Brief facts of the case relevant for the purpose of disposal of these petitions are that the aforementioned FIR was registered on the basis of

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the written complaint filed by the Superintendent, Post Office, Sonipat Division with the allegations that petitioner Jal Karan, one Sombir and petitioner Neeti were posted as Post Master in the Post Office, Mahara-I for the period as mentioned below:

Jal Karan	01.02.1994 to 28.10.2019	Rs. 3,77,700/-
Sombir	15.09.2020 to 26.03.2021	Rs. 1,19,550/-
Neeti	06.05.2020 to 09.09.2020 and 27.03.2021 to 13.08.2022	Rs. 1,86,100/-

4. It was further alleged that during their posting as such, they had embezzled the government money by withdrawing old age pension (which is given by the State of Haryana) from the accounts of the account holders on various dates after the death of such persons. The amount of govt. money so embezzled by the petitioners and co-accused is mentioned in the above table against their names. It was also alleged that the matter was being inquired into by the department and the amount of embezzlement could increase. Hence, the complainant prayed for taking legal action against the culprits by registering an FIR under the appropriate provisions of the IPC. After registration of the FIR, investigation proceedings were initiated. The petitioners were granted concession of anticipatory bail by this Court. After completion of necessary investigation and usual formalities, challan was presented in the Court and presently, the petitioners are facing trial for commission of aforesaid mentioned offences.

5. The present petition has been filed by the petitioners seeking quashing of FIR and *challan* report and the subsequent proceedings having emanated therefrom on the grounds that they have been falsely implicated in

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this case. Petitioners Jal Karan and Neeti had joined as Branch Post Master in Indian Postal Services in the year 1994 and 2013, respectively, and performed his duties as such very honestly and sincerely. The post of Branch Post Master was under the supervision of higher authorities and after every three months, all the official documents used to be checked and also during audit. Although, petitioner Neeti had been placed under suspension, however, petitioner Jal Karan had resigned from his services on 28.10.2019 i.e much before registration of the impugned FIR. His resignation was accepted by the department after proper verification and clearance. However, after a period of about three years, the present FIR had been registered with absolutely false allegations. The department inquiry is still pending against the petitioners. The allegations levelled in the impugned FIR are patently vague and general as no date, month or year had been given with regard to alleged embezzlements. Even no one has come forward from general public alleging misappropriation of their pension amounts. There is nothing on record to connect the petitioners with the alleged offences. Even otherwise, the petitioners had already deposited the amount of Rs. 3,77,700/- and Rs. 1,86,100/-, respectively, with the department on the directions given by this Court at the time of granting concession of anticipatory bail to the petitioners. It is argued that the allegations on the face of record do not make out any case for commission of offences for which the petitioners have been booked and challaned and, therefore, it is urged that these petitions deserve to be allowed and the proceedings as initiated against the petitioners as well as the FIR deserve to be quashed.

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6. *Per contra*, learned Senior Deputy Advocate General, Haryana, who has advance notice of the petitions, has argued that the petitioners had embezzled huge amount of public money and had caused wrongful financial loss to the State Exchequer, while misusing their official position. The petitioners had withdrawn pension amount from the accounts of the persons/beneficiaries, who had died, and had misappropriated the same. Hence, a *prima facie* case for commission of offences punishable under Sections 409 and 420 of IPC was made out against them. During the course of investigation, the allegations levelled against the petitioners had been found to be true and *challan* has been presented against them. As such, the petitioners are required to face the trial and no case for quashing the FIR in question has been made out. Accordingly, it has been urged that the present petition is liable to be dismissed.

7. I have heard learned counsel for the parties at considerable length and have gone through the record carefully.

8. A perusal of material placed on record reveals that the aforementioned FIR had been registered on a written complaint lodged by the Superintendent, Post Office, Sonipat Division with the allegations that the petitioners, while posted at Post Office, Mahara-I as Branch Post Master during the period as mentioned above, had criminally breached the trust and by using their official position had withdrawn pension amount from the accounts of the persons, who had died, thereby causing wrongful loss to the State Exchequer. After conducting thorough investigation in the matter, *challan* had been presented against the petitioners, wherein charges are to be framed. The question that arises for consideration before this Court is as to

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whether it is a fit case for quashing the impugned FIR by exercising powers under Section 528 of BNSS.

9. At the outset, it will be profitable to look into the scope and ambit of the Court's power under Section 528 of BNSS (*which is pari materia with Section 482 of Cr.P.C.*) as spelt out in several judicial pronouncements of Hon'ble Supreme Court as well as different High Courts. The well settled proposition of law is that in exercise of inherent powers under Section 482 of the Code, the High Court is not expected to analyze all the facts, which are to be placed before the High Court. The power conferred under this section is very specific and to secure the ends of justice or to prevent the abuse of process of Court or to make any such orders as may be necessary to give effect to any order under the Code, such power can be exercised to prevent abuse of process of Court. The Hon'ble Supreme Court has drawn up some guidelines in some categories of cases by way of illustration to circumscribe the exercise of inherent power under Section 482 of Cr.P.C. to prevent abuse of process of any Court or to secure the ends of the justice or to give effect to an order of the Court. A celebrated pronouncement on this point is the case cited as *State of Haryana vs. Bhajan Lal, 1992 SUPP (1) SCC 335*, wherein several guidelines have been laid down. Some of them, which are relevant for the purpose of disposal of the present petition, are reproduced as under:

- “(a) 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;
- (b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not

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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;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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.”

10. Reference can further be made to ***Gian Singh vs. State of Punjab, (2012) 10 SCC 303***, wherein Hon'ble Supreme Court has 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 plenitude 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. Reference can also be made to ***Padal Venkata Rama Reddy @ Ramu vs. Kovvuri Satyanarayana Reddy and others, (2011) 12 SCC 437***, wherein it was observed that the inherent power under Section 482 of the Code can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. Reliance can further be placed upon ***State of Andhra Pradesh vs. Gourishetty Mahesh and others, 2010 Criminal Law Journal 3844***, wherein the Apex Court has propounded that while exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it, accusation would not be sustained as that is the function of the trial Court.

11. It is also well settled proposition of law that the exercise of powers under Section 482 of the Code to quash proceedings is an exception and not a rule. In ***Dr. Monica Kumar and another vs. State of U.P. and others, (2008) 8 SCC 781***, the Apex Court has propounded that the inherent jurisdiction under Section 482 of the Code, though wide, is to be exercised sparingly, carefully and with caution, only when such exercise is justified by the test specifically laid down in the section itself and appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of this power. The inherent powers do not confer an arbitrary jurisdiction

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upon the High Court to act according to whims and caprice. In ***Taramani Parakh vs. State of M.P. and others, 2015 (2) RCR (Criminal) 445***, Hon'ble Supreme Court has held that Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but on an opinion formed *prima facie*. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied, if there is substantial compliance with the requirements of the offence.

12. It is also well settled that if a petition under Section 482 of the Code has been filed at the stage of investigation, then it is only required to be considered whether a cognizable offence is disclosed or not. However, when the statements of the witnesses are recorded, evidence is collected and the chargesheet is filed after conclusion of investigation/enquiry, the matter stands on a different footing and the Court is required to consider the material/evidence collected through investigation. Even at that stage, the High Court is not required to go into the merits of the allegations and/or entering into the merits of the case as if it is exercising the appellate jurisdiction and/or conducting trial. If in order to examine as to whether the factual contents of the FIR disclose any cognizable offence or not, the High Court cannot act like investigating agency nor can exercise the powers like an appellate court. The said question is required to be examined keeping in view the contents of the

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FIR and prima facie material, if any, requiring any proof. At this stage, the High Court cannot appreciate the evidence as to whether it can draw its own inference from the contents of the FIR and the material relied on it. The appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 of the Code. Reference in this regard can be made to the observations made by Hon'ble Supreme Court in *Kaptan Singh vs. State of U.P. and others, 2021 SCC Online SC 580*. In *Dhruvaram Murlidhar Sonar vs. State of Maharashtra, (2020) 3 SCC (Criminal) 672*, wherein Hon'ble Supreme Court has observed that exercise of powers under Section 482 of the Code to quash the proceedings is an exception and not a rule. Inherent jurisdiction under Section 482 of the Code though is to be exercised sparingly, carefully and with caution only when such exercise is justified by the tests specifically laid down the section itself. It is further observed that the appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 of the Code.

13. On applying the ratio of law as laid down in the above cited cases to the peculiar facts and circumstances of the present case, I am of the considered opinion that no case for quashing of FIR or the consequential proceedings emanating therefrom including the *challan* report has been made out. The complainant, who Superintendent, Post Office, Sonipat Division, in his complaint filed before the police, had levelled specific allegations against the petitioners that they had embezzled the public money by misusing their official position. Petitioner Jal Karan is stated to have resigned from his services, whereas petitioner Neeti has been placed under suspension and the

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departmental inquiry is going on against both the petitioners. On the basis of these allegations, it cannot be stated that no case for commission of offences punishable under Sections 409 and 420 of IPC has been made out as against the petitioners. It would be premature to say so and aforesaid aspect is to be considered during trial. The trial has commenced and there is nothing to show that there would be any undue delay in conclusion of the same. So far as the plea of the petitioners that they had already paid back the amount to the department, allegedly embezzled by them, and the same makes them entitled to seek quashing of impugned FIR as a matter of right, is concerned, it is well settled law that the repayment of embezzled funds does not absolve an individual from criminal liability, nor does it provide sufficient grounds to quash an FIR. Reliance in this regard can be placed upon the authority cited as ***Sushil Suri vs. Central Bureau of Investigation (CBI) and another : (2011) 5 SCC 708***, wherein it was held by Hon'ble Supreme Court that the repayment of loan amount obtained through fraudulent means does not exonerate the accused from criminal charges and the offences involving deceit and forgery are crimes against society and cannot be nullified merely because of a settlement between the parties.

14. As such, keeping in view the entire facts and circumstances of the case, I am of the considered opinion that no ground whatsoever has been made to interfere at this stage for quashing the FIR, *challan* report and other consequent proceedings emanating therefrom. The petitions are accordingly dismissed. The trial is directed to be conducted further in accordance with law and on its own merits.

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15. It is, however, clarified that no observations made herein above are the reflection on the merits of the case and shall have no bearing on trial. The same are confined for the decision of the present petition only.

16. Let a photocopy of this order be placed on the file of the connected case.

28.02.2025

Wassem Ansari

**(MANISHA BATRA)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No