

2024:PHHC:146125



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

**CRM-M-35747-2024
DECIDED ON: 29.07.2024**

JASMEET KAUR AND ANOTHER
.....PETITIONERS
VERSUS

STATE OF PUNJAB AND ANOTHER
.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Shivya Sehgal, Advocate and
 Mr. Vaibhav Sehgal, Advocate
 for the petitioners.

Mr. Rajiv Verma, DAG, Punjab.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court has been invoked under Section 528 of Bhartiya Nagrik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS') seeking quashing of FIR No. 64, dated 17.07.2024, under Section 406 IPC, registered at Police Station Women, Jalandhar (Annexure P-4) along-with all consequential proceedings arising therefrom.

2. The principal contention put forth by the counsel for the petitioner is that the impugned FIR represents a manifest abuse of the legal process, given that the Bhartiya Nagrik Suraksha Sanhita, 2023 came into effect on 01.07.2024, while the FIR in question was registered on 17.07.2024 under the provisions of the Indian Penal Code, 1860. As the married sister-in-law of respondent No. 2-complainant, petitioners No. 1 and 2 are said to have

nothing was entrusted to petitioners No. 1 and 2, they cannot be held criminally accountable for the contested FIR, which was filed under Section 406 IPC, which requires theft and breach of trust. The assertion is that because petitioners No. 3 and No. 4 have already lost their young son and are not in a position to fight a legal battle in their later years, it is argued on their behalf that the allegations are utterly ludicrous, vicious, and far-fetched. As a result, the petitioners cannot be subjected to the ordeal of a criminal trial.

3. Learned State counsel is not in a position to controvert the factual aspect as to whether the impugned FIR has been registered on 017.07.2024 under the Indian Penal Code, 1860 instead of BNSS, 2023, which has come into force on 01.07.2024

4. Heard learned counsel for the respective parties.

5. The Supreme Court in the case of “**State of Haryana & Ors. Vs. Bhajan Lal & Ors. 1992 Supp (1) SCC 335**” the scope of inherent powers of the High Court under Section 482 Cr.P.C. to quash the FIR has been discussed in detail. At the same time, the Apex Court identified the following cases in which FIR/complaint can be quashed:

“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 un-controverted 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 Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the 21 proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with malafide 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.”

6. Section 358 BNS, 2023, reads as under:

Repeal of the Indian Penal Code:

(1) The Indian Penal Code is hereby repealed.

(2) Notwithstanding the repeal of the Code referred to in sub-section (1), it shall not affect:

- (a) the previous operation of the Code so repealed or anything duly done or suffered thereunder; or*
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under the Code so repealed; or*
- (c) any penalty, or punishment incurred in respect of any offences committed against the Code so repealed; or*
- (d) any investigation or remedy in respect of any such penalty, or punishment; or*
- (e) any proceeding, investigation or remedy in respect of any such penalty or punishment as aforesaid, and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty may be imposed as if that Code had not been repealed.*

(3) Notwithstanding such repeal, anything done or any action

taken under the said Code shall be deemed to have been done or taken under the corresponding provisions of this Sanhita.

(4) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of the repeal."

7. From the perusal of FIR, it is evident that the impugned FIR stands registered under a dead statute. It is settled law that once an act or code is repealed, it has to be treated that the said act was never in existence, meaning thereby, the registration of impugned FIR under the IPC is a clear abuse of process of law. The General Clauses Act of 1897 defines repeal as the act of abrogating or obliterating a statute from the statute book, as if it had never been passed. This means that the repealed act is considered to have ceased to apply to past acts that were not concluded before the repeal.

8. The Assam High Court in the case of "Sythat Co-op. Central Bank Limited v. Dhirendra Nath De" Reported in AIR 1956 Assam Page 66 has held as under:

"The repeal of an Act completely wipes out the law which is the subject-matter of the repeal. It is to be deemed as having existed only for those actions which were commenced, prosecuted and concluded. Even pending actions can not be continued. The High Court quoted with approval the view of Lord Tenterden:

"When an Act of Parliament is repealed,-it must be considered (except as to transactions past and closed), as if it had never existed".

"The effect of repealing a statute is to obliterate it as completely from the records of Parliament as if it had never been passed; and it must be considered as a law that never existed except for the purpose of those actions which commenced, prosecuted and concluded whilst it was an existing law".

9. The Hyderabad High Court in the case of "Waheed Hasam Khan v. State of Hyderabad" reported in AIR 1954 Hyderabad Page 204, has held as under.

"When an Act is repealed, it is the same thing as if it had never existed except with reference to such parts as are saved by the repealing statute".

10. In view of the afore-said discussions as well as the judicial pronouncements, this Court is of the considered view that the impugned FIR is nothing but an abuse of process of law and is liable to be quashed. Hence, the impugned FIR 64, dated 17.07.2024, under Section 406 IPC, registered at Police Station Women, Jalandhar (Annexure P-4) and all consequential proceedings arising therefrom, is hereby quashed qua the petitioners, as it registered under a dead statute.

11. In the afore-said terms, the present petition is allowed.

(SANDEEP MOUDGIL)
JUDGE

29.07.2024

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No