

**HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW)**

Neutral Citation No. - 2024:AHC-LKO:84253

Reserved on :- 28.11.2024
Pronounced on :- 17.12.2024

Court No. - 14

Case :- APPLICATION U/S 528 BNSS No. - 76 of 2024

Applicant :- Manoj @ Manoj Kumar And 6 Others

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy.
Home /Prin. Secy. Home Lko. And 2 Others

Counsel for Applicant :- Mohd.Ataf Mansoor,Aditya
Vikram Singh,Tanay Chaudhary

Counsel for Opposite Party :- G.A.

Hon'ble Ajai Kumar Srivastava-I, J.

1. Heard Sri Raghvendra Singh, learned Senior Counsel assisted by Sri Mohd. Ataf Mansoor, Sri Aditya Vikram Singh, Sri Tanay Chaudhary, learned counsel for the applicants, and Sri Rajesh Kumar Singh-I and Sri Mayank Sinha, learned AGA for the State-respondent no.1 and perused the written submissions submitted by learned counsel for the applicants.

2. This application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ has been filed praying *inter alia* following main prayers :-

A. Quash the order, dated 15.11.2024, passed by the Additional Sessions Judge/ Spl. Judge, (S.C./S.T. Act), Ayodhya, in Misc. Case No. 182/2024 and 184/2024 whereby, the learned court below directed registration of a first information report and conducting of an investigation in pursuance of the concerned first information report.

B. Quash the First Information Report, if any, that may have been registered pursuant to or on the basis of the impugned order dated 15.11.2024;

C. To direct the police and government authorities not to take any coercive action against the Applicants on the basis of the impugned order dated 15.11.2024 during the pendency of the present petition;

D. It is further prayed to put in abeyance the effect, operation and implementation of the impugned order, dated 15.11.2024, during the pendency of the present petition."

3. The brief facts giving rise to the instant application are that the opposite parties No.2 and 3 moved two applications bearing No.184 of 2024 and 182 of 2024, respectively, under Section 175(3) of Bharatiya Nagarik Suraksha Sanhita, 2023² for getting the case registered and investigate against the present applicants herein, which came to be allowed by means of impugned order dated 15.11.2024 passed by the learned Additional District

¹ hereinafter referred to as "B.N.S.S."

² hereinafter referred to as B.N.S.S.

& Sessions Judge/ Special Judge, (S.C./ S.T. Act), Faizabad/ Ayodhya.

4. It is submitted by learned Senior Counsel for the applicants that the impugned order dated 15.11.2024 passed by the learned trial court concerned is without jurisdiction as the alleged victims do not belong to the Scheduled Castes and Scheduled Tribes community. Therefore, the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989³ are not attracted in this case and consequently the Special Judge, SC/ST Act would have no jurisdiction to entertain such application moved on behalf of opposite party nos.2 and 3.

5. His further submission is that the the complainants, namely, Gomti Devi and Kadama, who are the opposite parties No.2 and 3 respectively herein, have used fraudulent caste certificates to claim the status of S.C./ S.T. He has also submitted that in **Public Interest Litigation bearing No.2129 of 2017** titled **Dr. B.R. Ambedkar Granthalaya Evam Jan Kalyan vs. State of U.P. and others**, this Hon'ble Court vide order dated 31.08.2022 has quashed the Government Order dated 22.12.2016 bringing 'Nishad' under the S.C./ S.T. category. Therefore, the opposite party nos.2 and 3 could not have maintained application under Section 175(3) B.N.S.S. before the Court Additional Sessions Judge/Special Judge (SC/ST Act), Ayodhya.

³ Hereinafter referred to as "S.C./ S.T. Act"

6. It is further submitted by learned Senior Counsel appearing for the applicants that the impugned order dated 15.11.2024 is patently illegal, which has been passed without application of judicial mind. His further submission is that impugned order is an outcome of suppression of material facts that too deliberately, therefore, the order itself is vitiated because of suppression of material facts by opposite party nos.2 and 3.

7. It is also submitted by learned Senior Counsel for the applicants that in the aforesaid factual background and having regard to the material changes, which have been brought in B.N.S.S., which has come into force w.e.f. 01.07.2024, the interpretation based on the provisions contained in Section 482 Cr.P.C. has undergone drastic changes. In the same breath, He has also submitted that provisions regarding taking of cognizance has also been amended drastically so as to ensure fair treatment to the complainants as well as the accused. Thus, in view of the aforesaid, learned Senior Counsel for the applicants has submitted that the applicants have every right to be heard before passing of impugned order and there also entitled to prefer this application to invoke inherent power of this Court as contained in Section 528 of B.N.S.S.

8. It has also been submitted with vehemence that while dispensing justice, no litigant, more particularly an accused can be left remediless, therefore also, in this view of the matter, approaching this Court to invoke its inherent

jurisdiction is always maintainable at the behest of the applicants.

9. Besides advancing various other submissions touching aspects of innocence and false implication of the present applicants, it has also been submitted that as the provision for anticipatory bail is generally not applicable to the cases falling under S.C./ S.T. Act, therefore, the present applicants shall, by implication, be rendered remediless.

10. It is also submitted by learned Senior Counsel for the applicants that the impugned order dated 15.11.2024 is an abuse of process of the Court as the procedure prescribed under Section 175 of B.N.S.S. has not been followed. The learned Special Judge has neither made any inquiry to ascertain veracity of allegations levelled against the applicants herein nor has the court assigned any reason for ignoring the police report, which was placed before the court pursuant to the new provisions contained in B.N.S.S., which is mandatory in nature. Therefore, the impugned order dated 15.11.2024, which has been passed in utter disregard of mandatory statutory provision would cause serious prejudice to the applicants herein, who are innocent employees and working in the company which is dedicatedly undertaking infrastructural development of city of Ayodhya so that state of art in housing colonies with all modern amenities may be provided to common people.

11. To buttress his aforesaid submissions, learned Senior Counsel for the applicants has placed reliance upon various judgments rendered by the Hon'ble Supreme Court in the cases of **Father Thomas vs. State of U.P. and others** reported in **2010 SCC OnLine All 2438**, **Kapil Agarwal and others vs. Sanjay Sharma and others** reported in **(2021) 5 SCC 524**, **Brijendra Kumar Patel and others vs. The State of Madhya Pradesh and another**, decided on **25.10.2024**, **Ramdev Food Products Private Limited vs. State of Gujarat** reported in **(2015) 6 SCC 439**, **Chandra Kishore Jha vs. Mahavir Prasad and others** reported in **(1999) 8 SCC 266** and **Hitesh Verma vs. State of U.P.** reported in **(2020) 10 SCC 710**. He has also placed reliance upon a judgment of this Court in **Criminal Writ-Public Interest Litigation No.8 of 2018** titled **In re Provision of Section 14A of SC/ ST (Prevention of Atrocities) Amendment Act, 2015 vs. Nil** reported in **2018 SCC OnLine All 2087**, and has concluded on the basis thereof that the present application is not only maintainable at the behest of the applicants herein, but also deserves to be allowed by quashing the impugned order dated 15.11.2024.

12. Learned Additional Government Advocates appearing for the State have not disputed the aforesaid submissions; rather they submit that in view of the provisions contained in the new B.N.S.S., the contentions of learned Senior Counsel appearing for the applicants hold good.

13. Having heard learned Senior Counsel appearing for the applicants, learned A.G.A. for the State and upon perusal of the material available available on record, the foremost question, which crops up before this Court, is whether the prospective accused against whom a criminal case is yet to be registered, has right to assail the order passed in exercise of powers vested in the learned Magistrate under Section 175(3) B.N.S.S. whether such application is maintainable at the behest of the applicants ?

14. The provisions contained in Section 175(3) B.N.S.S. being germane to this issue is quoted herein below:-

"175. Police officer's power to investigate cognizable case.

(1).....

(2).....

(3) Any Magistrate empowered under Section 210 may, after considering the application supported by an affidavit made under sub-section (4) of Section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above-mentioned."

15. The corresponding provision in Cr.P.C. i.e. Section 156(3) Cr.P.C. is also quoted herein below :-

"156. Police officer's power to investigate cognizable case.

(1).....

(2).....

(3) Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned."

16. The only distinction between the aforesaid two provisions appears to be that in the new Section 175(3) B.N.S.S., provides that the Magistrate may order for investigation, after considering the application supported by an affidavit made under sub-section (4) of Section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer.

17. The order passed while disposing of an application moved under Section 156(3) Cr.P.C., which appears in Chapter XII of the Cr.P.C., according to Hon'ble the Supreme Court is passed at a pre-cognizance stage. In this regard, a judgment rendered by Hon'ble the Supreme Court in **M/s SAS Infratech Pvt. Ltd. vs. The State of Telangana and another** passed in **Criminal Appeal No.2574 of 2024** arising out of **Special Leave Petition (Crl.) No.2123 of 2024**, on 14.05.2024 may be usefully referred to and paragraph No.8, being relevant, is quoted herein below :-

"In view of the above, it is clear that when the Magistrate in exercise of his judicial discretion directs investigation under Section 156(3) of Cr.P.C., he cannot be said to have taken cognizance of any offence. It is only when the Magistrate after applying his mind prefers to follow the procedure under Chapter XV of Cr.P.C. by resorting to Sections 200, he can be said to have taken cognizance of the offence."

(emphasis supplied)

18. Thus, on the basis of what has been held in **M/s SAS Infratech Pvt. Ltd.'s case (supra)**, there cannot be any doubt about the fact that while passing an order under Section 156(3) Cr.P.C., the Magistrate cannot be said to have taken cognizance of any offence, which is done by the learned Magistrate after applying judicial mind when he prefers to follow the procedure under Chapter XV of the Cr.P.C. by resorting to Section 200 of the Cr.P.C. Similarly, even in the new scheme of B.N.S.S. the Magistrate can be said to have taken cognizance of the matter only when he prefers to resort to provisions contained in Sections 223 and 225 B.N.S.S. which occurs in Chapter XVI of B.N.S.S. It is again needless to mention that the provision contained in Section 175(3) B.N.S.S. occurs in Chapter XIII of B.N.S.S.

19. It is also relevant to refer to a judgment passed by co-ordinate Bench of this Court in **Application U/s 482 No.2600 of 2021 titled Dhanesh Chandra Sharma and another vs. State of U.P. and another**, decided on 02.02.2021, wherein in para no.10 this Court has held as under :-

"10. It may therefore be reiterated that at the pre-cognizance stage when only a direction has been issued by the Magistrate under Section 156 (3) Cr.P.C. to investigate a prospective accused has no locus standi to challenge a direction for investigation of a cognizable case before cognizance or the issuance of process. It may also be taken note of that the order by the Magistrate directing a police officer to investigate a cognizable

case is an incidental step in the aid of investigation and trial and is interlocutory in nature, similar to orders granting bail, calling for records, issuing search warrants, summoning witnesses and other like matters which do not impinge upon a valuable right of a prospective accused and is, hence, not amenable to a challenge in a criminal revision in view of the bar contained under Section 397(2) Cr.P.C.”

(Emphasis supplied)

20. In **Father Thomas’s case (supra)** while replying to third question referred to it, the Full Bench of this Court has held that the view expressed by Division Bench of this Court in **Ajay Malviya vs. State of U.P.** reported in **2000 (41) ACC 435**, to the effect that filing a writ petition for quashing the first information report is not maintainable is not correct, which in its plain meaning conveys that once the first information report is lodged pursuant to impugned order directing registration of a case, the private opposite parties may maintain a writ petition seeking quashing of the first information report and a criminal revision was held to be not maintainable at the behest of the private opposite parties/prospective accused. Therefore, it cannot be said that the impugned order has rendered them remediless.

21. In **Kapil Agarwal’s case (supra)**, Hon’ble the Supreme Court was seized with a matter wherein the High Court had refused to quash the first information report, which was prayed by means of a petition filed under Article 226 of the Constitution of India. In this case too, the first information report had already come to be registered against the appellants and the same was

challenged by means of a writ petition filed under Article 226 of The Constitution of India.

22. In the case of **Brijendra Kumar Patel's case (supra)** a challenge was made to an order passed under Section 153(3) Cr.P.C. as also a prayer for discharge was sought by the petitioner by means of a writ petition filed under Article 226 of The Constitution of India, which ultimately came to be allowed by Madhya Pradesh High Court.

23. Likewise, the judgment rendered by Hon'ble the Supreme Court in **Ramdev Food Products Private Limited's case (supra)**, **Hitesh Verma (supra)** and also the judgment of full Bench of this Court passed in the case of **In re Provision of Section 14A of SC/ ST (Prevention of Atrocities) Amendment Act, 2015 (supra)**, in the peculiar facts of this case, are distinguishable which do not assist the case of the applicants in any manner for the reason that in the aforesaid cases either writ petition under Article 226 of The Constitution of India was filed for quashing the first information report pursuant to an order passed under Section 156(3) Cr.P.C.

24. Thus, on the basis of whatever has been discussed above, what comes out succinctly is that the provisions contained in Section 528 of B.N.S.S. remain unchanged and are identical to its corresponding provision i.e. Section 482 of Cr.P.C. Hon'ble the Supreme Court in **Renu Kumari v. Sanjay Kumar, (2008) 12 SCC 346**

has held that in exercising jurisdiction under Section 482 CrPC, 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. It is also no more *res integra* that inherent powers under Section 482 Cr.P.C. cannot be used to stifle prosecution at inception even before material and evidence is collected. It is also noteworthy that under Section 482 Cr.P.C. a party gets no vested or inherent right to seek interference. In exercise of that jurisdiction the High Court steps in only to meet the contingencies catalogued in Section 482 Cr.P.C. itself.

25. The impugned order has come to be passed by learned trial court thereby directing the concerned police station to register a case and investigate the same on the basis of allegation and material placed before the learned trial court. Therefore, till any case is registered pursuant to aforesaid order, the status of the present applicants is nothing more than that of a prospective accused only, against whom, even a first information report is yet to be lodged. In view of the judgment rendered by this Court in **Father Thomas's case (supra)** and various other judgments filed by the applicants in support of their contention, the writ petition is always maintainable for seeking relief of quashing of the first information report.

26. Hon'ble the Supreme Court in **HDFC Securities Ltd. and others vs. State of Maharashtra and another**

reported in **(2017) 1 SCC 640**, in paragraph No.27 has held as under :-

"27. It appears to us that the appellants approached the High Court even before the stage of issuance of process. In particular, the appellants challenged the order dated 4-1-2011 passed by the learned Magistrate under Section 156(3) CrPC. The learned counsel appearing on behalf of the appellants after summarising their arguments in the matter have emphasised also in the context of the fundamental rights of the appellants under the Constitution, that the order impugned has caused grave inequities to the appellants. In the circumstances, it was submitted that the order is illegal and is an abuse of the process of law. However, it appears to us that this order under Section 156(3) CrPC requiring investigation by the police, cannot be said to have caused an injury of irreparable nature which, at this stage, requires quashing of the investigation. We must keep in our mind that the stage of cognizance would arise only after the investigation report is filed before the Magistrate. Therefore, in our opinion, at this stage the High Court has correctly assessed the facts and the law in this situation and held that filing of the petitions under Article 227 of the Constitution of India or under Section 482 CrPC, at this stage are nothing but premature. Further, in our opinion, the High Court correctly came to the conclusion that the inherent powers of the Court under Section 482 CrPC should be sparingly used."

(emphasis supplied)

27. So far as the submissions of learned Senior Counsel for the applicants to the effect that the impugned order has rendered the opposite parties to be remediless is concerned, in this regard, after having given its thoughtful consideration, this court does not find any substance in the aforesaid submissions for the reason that once a first information report comes to be lodged in pursuant of the impugned order, soon after the registration of first information report, the applicants will have a remedy of seeking relief for quashing of the first information report by filing appropriate petition under Article 226 of the Constitution of India as held by this Court in **Father Thomas's case (supra)**.

28. At the stage of passing an order under Section 175(3) B.N.S.S., which exists in Chapter XIII of B.N.S.S., it cannot be said that by means of impugned order dated 15.11.2024 the learned trial court proceeded to take cognizance of the matter, therefore, right of hearing, if any, as envisaged under Sections 223(1) and 225 B.N.S.S., which are placed under Chapter XVI of B.N.S.S. was not available to the present applicants at the stage of passing any order under Section 175(3) B.N.S.S. by the Magistrate. The fact that the opposite party nos.2 and 3 herein have lost status of S.C./ S.T. community because of some judgment rendered by Division Bench of this Court, is such a fact, which cannot be adjudicated at this stage and the same may be raised by the applicants while assailing the first information report pursuant to impugned order dated 15.11.2024 by incorporating a suitable plea in

this regard and therefore, it cannot be said at this stage that it is *prima facie* a case of suppression of material facts by opposite party nos. 2 and 3.

29. Besides, the applicants have remedy of seeking anticipatory bail in view of what has been held by Hon'ble the Supreme Court in the case of **Shajan Skaria v. State of Kerala, 2024 SCC OnLine SC 2249**. The statutory remedy of seeking regular bail or seeking relief for quashing of order taking cognizance and entire proceeding may also be sought by any applicant, if he is so advised.

30. Therefore, in view of the availability of aforesaid constitutional as well as legal remedies, it cannot be said that the impugned order has rendered the applicants as remediless.

31. Thus, the upshot of the aforesaid overall discussion is that the impugned order dated 15.11.2024, passed by the learned Magistrate under Section 175(3) B.N.S.S., has been passed at precognizance stage. The applicants themselves have sought prayer to the effect that no coercive action should be taken against them pursuant of the impugned order dated 15.11.2024 and the same should not be given effect to, meaning thereby that no first information report has come to be lodged till date in pursuance of the impugned order dated 15.11.2024.

32. Therefore, in view of the aforesaid overall discussions, the present application, in the considered opinion of this Court, is nothing but a pre-mature exercise

on the part of the applicants, which being devoid of merits deserves to be dismissed and is accordingly, **dismissed**.

(Ajai Kumar Srivastava-I, J.)

Order Date :- 17.12.2024

A.Dewal/Arnima