



2025:AHC:151640

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 7410 of 2025

Mohd. Alim Alias Shanu And Another

.....Applicant(s)

Versus

State Of U.P. And 3 Others

.....Opposite
Party(s)

Counsel for Applicant(s) : Mohd. Samiuzzaman Khan, Rashid Ali
Counsel for Opposite Party(s) : G.A.

Court No. - 75

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Mohd. Samiuzzaman Khan, learned counsel for the applicants and Sri Vikas Sharma, learned State Law Officer for the State.
2. This Court on 6.3.2025 issued notices to the opposite party number two. There is an office report dated 17.3.2025, where the notice has been served upon the opposite party number two. However, till the dictation of the order, nobody is present on behalf of the opposite party number two. Thus, this Court is proceeding with the matter.
3. This application under Section 528 BNS has been preferred to quash the entire criminal proceedings of Complaint Case No. 62 of 2024 (Yusuf Khan vs. Mohammad Alim @ Babu and another) under Sections 354Kha, 323, 504 and 506 I.P.C. and Section 7/8 of POCSO Act, Police Station Kotwali, District-Rampur as well as Summoning Order dated 11.12.2024, under Sections Under Sections 354Kha, 323, 504 and 506 I.P.C. and Section 7/8 of POCSOo Act, pending in the Court of Special Judge POCSO Act, District-Rampur.
4. The case of the applicants is that proceedings under Section 156(3) of Cr.P.C. came to be lodged by the opposite party no. 2 against the applicants with an allegation that the opposite party no. 2 is a social worker and on 18.6.2024, he was called in City Kotwali Rampur for some work and his wife and his minor daughter, the victim, had come to the had come to Kotwali to meet him and at about 12:30 at noon on 18.6.2024, when they reached near a lane then the applicants along with an unknown

person, came in the way of the daughter and the wife of the opposite party no. 2 and started shouting and threatening that why in the court case statement was not given in their favour and when the same was resisted then the applicants here, along with the unknown accused became angry hurled abuses and applicant no. 1 along with applicant no. 2 and the unknown persons with bad intentions, pounced upon the minor victim and caught hold of her, forcibly taking her to their house while trying to disrobe her and tore her apparels and so much indecent behavior and gestures were also extended towards the wife of the opposite party no. 2, she was thought to be disrobed, her clothes were torn, and her private parts were being touched. The said incident was witnessed by Smt. Seema Bi, alias Sameena, and Smt. Gulnaz, wife of Javed Khan, wherein the said act and omission was resisted by the wife of the opposite party no. 2 then, applicant no. 1 took out his country-made pistol and placed it on the chest of the wife of the opposite party 2 and threw the victim on the floor. The said incident was narrated to the opposite party 2 when the wife and the minor daughter of the opposite party no. 2 came to the house.

5. Due to the said injury, the wife, and the minor daughter sustained pain. An application was written on 21st June 2024 before the Senior Superintendent of Police. However, nothing was done, so on 24th June 2024, proceedings under section 156(3) of the CRPC came to be lodged. The case was transformed into a complaint case, and after recording the statements of the opposite party no. 2, Seema Bi under section 202, and Gulnaz and victim under section 202. The applicants came to be summoned under sections 354Kha, 323, 504, 506 of the IPC, read with section 7/8 of the POCSO Act on 11.12.2024 by the Special Judge POCSO Act, Rampur.

6. Questioning the summoning order, the present application has been preferred.

7. The learned counsel for the applicants has submitted that the summoning order cannot be sustained for the simple reason that, first of all, totally false and incorrect allegations have been sought to be levelled which have no basis with reality. Submission is that the applicants are innocent and had there been any incident occurred then the victim ought

to have been sent to medical examination when the summoning had been made under Section 323 IPC regarding sustaining injuries. Since there is nothing on record to suggest that the victim was sent for medical examination that the entire prosecution theory stands eroded. Further Submission is that though as per the narration of the allegations under Section 156(3) Cr.P.C., on 21.06.2024 a written complaint was lodged before the SSP, Rampur through registered post for lodging of the first information report but just after three days without there being any reasonable lapse of time on 24.06.2024 the proceedings under Section 156(3) Cr.P.C. came to be lodged. Submission is that without availing the remedies as available under the Cr.P.C. the proceedings under Section 156(3) ought not to have been filed and the Court while summoning the applicants has not taken into consideration the law of the land in the case of **Priyanka Srivastava and others Vs. State of U.P. (2015) 6 SCC 287**. It is also contended that there is not supporting affidavit while filing application u/s 156(3), thus, the summoning order cannot be sustained. Further submission is that even a Complaint No. 70 of 2024 also came to be preferred by the wife of the opposite party no. 2 against the applicants regarding an incident dated 09.05.2025, on 17.05.2024 which shows that it is nothing but a device deployed for for harassing the applicants to the optimum level. It is also contended that the statements of the witnesses under Sections 200 and 202 are tailor-made just in order to suit the case of the prosecution and the court below in a routine manner without advertng to the core and the fundamental principles had summoned the applicants and that too without recording any, *prima facie*, satisfaction regarding the application of the penal sections.

8. Learned State Law Officer, on the other hand, submits that from the perusal of the statements under Sections 200 and 202 vis-a-vis the allegations contained in the complaint shows that there are no material contradictions which goes to the root of the matter which makes it case triable and further at the stage of summoning there are sufficient material to proceeding with the matter.

9. I have heard the submissions so made across the bar and perused the record carefully.

10. Apparently, at the instance of the applicants, challenge has been raised to the summoning order whereby the applicants have been summoned under the above penal sections. There are various criteria which have to be adhered to in order to determine and adjudge whether the summoning order suffers from any legal infirmity or not. Amongst others, one of the criteria inevitably would be, the allegations contained in the complaint vis-a-vis the statements under Section 200 and 202. In case, there are no material contradictions or variation which go to the root of the matter then the case becomes triable and the court should be reluctant in interfering at the stage of summoning so as to scuttle the proceedings. Applying the principles of law in the present facts of the case the complaint alleges that on 18.06.2024 when the wife of the opposite party no.2 and the minor daughter (victim) was proceedings towards the Kotwali then the applicants therein pounced upon the victim and the wife of the opposite party no. 2 and thereafter caught hold of the opposite party no. 2 and the victim and tore her clothes and exhibited indecent gestures and behaviour. The statement of the complainant under Section 202 vis-a-vis of Seema B. and Gulnaz are supporting the prosecution case and so far as on top of it, the victim has herself alleged that the applicants herein pounced upon her and threatened the mother that she had not given statement in favour of the applicants faction that is false statement so as to make the case decided in their favour hurled abuses and also slapped the mother of the opposite party no. 2 and she was lifted by the applicants, her clothes were torn and indecent behaviour was exhibited and even her breast was pressed. Once in the statement of the victim criminality has been pointed out towards the applicants then obviously the case becomes triable. So far as the other contentions sought to be raised by the learned counsel for the applicants that though as per the complaint, the opposite party no. 2 had approached the police on 21.06.2024 but without waiting for any action to be taken the proceedings came to be lodged on 24.06.2024 and the complaint lacks an affidavit which is not in conformity with the judgment of Hon'ble Apex Court in **Priyanka Srivastava (supra)** which further makes the complaint not maintainable and, thus, the applicants would not have been summoned is concerned, the same is not convincible at this stage particularly when the Magistrate has applied its mind and on the basis of the statement under Section 200 and 202 has summoned the

applicants. The issue whether an application u/s 156(3) Cr.P.C. could have been filed without approaching the police authorities came up for consideration in the recent decision in **Special Leave Petition (Criminal) No. 18084 of 2024 (Anurag Bhatnagar Vs. State (NCT of Delhi) and others** decided on 25.07.2025 wherein, it was observed as under.-

“32. In the facts and circumstances of the case, as the informant had directly moved the Magistrate under Section 156(3) of the CrPC without exhausting his statutory remedies, the Magistrate could have avoided taking action on the said application and could have refused to direct for the registration of the FIR. However, as entertaining an application directly by the Magistrate is a mere procedural irregularity and since the Magistrate in a given circumstance is otherwise empowered to pass such an order, the action of the Magistrate may not be illegal or without jurisdiction.

33. To sum up, the Magistrate ought not to ordinarily entertain an application under Section 156(3) CrPC directly unless the informant has availed and exhausted his remedies provided under Section 154(3) CrPC, but as the Magistrate is otherwise competent under Section 156(3) CrPC to direct the registration of an FIR if the allegations in the application/complaint discloses the commission of a cognizable offence, we are of the opinion that the order so passed by the Magistrate would not be without jurisdiction and would not stand vitiated on this count.”

11. Even otherwise, at the stage of summoning what is required for the court below is to see whether the case on the basis of the record is *prima facie* triable or not once the Magistrate is of the opinion that the case is not frivolous so as to scuttle the said proceedings and it triable then it would not be appropriate for the Court to scuttle the proceedings. As regards the submissions made by the learned counsel for the applicants that the victim was not subjected to medical examination is concerned, the same is not convincing particularly when the effect and the impact on non-subjection to medical examination is an issue which needs consideration at the stage when the trial commences when decision is to be taken whether it is a case of acquittal or conviction. With respect to the argument that multiple complaints have been lodged just to harass is concerned, they are the subject matter of defence consideration whereof is not required to be done at the stage of summoning as they are subject

matter of trial. The extent of judicial intervention under Section 482 Cr.P.C./528 BNSS in the matters where summoning orders are subject matter of challenge in a complaints case came up for consideration in **Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others, AIR 2021 SC 1918**, wherein the following was observed.-

“23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or “no coercive steps to be adopted”, during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article of the Constitution of India, our final conclusions are as under:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;
- ii) Courts would not thwart any investigation into the cognizable offences;
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;
- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;
- vi) Criminal proceedings ought not to be scuttled at the initial stage;
- vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;
- ix) The functions of the judiciary and the police are complementary, not overlapping;
- x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported.

Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under

Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”

12. Cumulatively analyzing the case from the four corners of law, this Court does not find the present case to be a fit case for interference as there is nothing exceptional in this regard. Accordingly, interference is declined, the application stands **disposed of** leaving it open for the applicants to take all legal and factual grounds which are permissible and advisable under law before the court below while contesting the trial and this Court has no reasons to disbelieve that the same shall be considered with correct perspective.

(Vikas Budhwar,J.)

August 28, 2025

Rajesh