

Court No. - 71

Case :- APPLICATION U/S 528 BNSS No. - 8200 of 2025

Applicant :- Imran Alias Mohd. Imran

Opposite Party :- State Of U.P. And 4 Others

Counsel for Applicant :- Brijesh Chandra Naik

Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh,J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State.
2. The present application under Section 528 of Bhartiya Nagarik Suraksha Sanhita (*hereinafter referred as 'BNSS'*) has been filed seeking following relief:-

"It is therefore most respectfully prayed that this Hon'ble court be pleased to quash the impugned judgment and order dated 29.6.2024 passed by Additional Session Judge/Fast Track Court No. 2, Saharanpur in Criminal Revision No. 222 of 2022, Police Station-Biharigarh, District- Saharanpur and modify the the summoning order dated 10.5.2022, passed by Judicial Magistrate 3rd, Saharanpur in Complaint Case No. 71 of 2021, Imran Versus Pankaj & others, by summoning the opposite party No. 5- Master Nagendra, son of Dharmraj also and by summoning all the accused-opposite party No. 2 to 5 under Sections 467, 468, 471, 120B/34 I.P.C. also, apart from Section 420 I.P.C., or pass such other and further orders which this Hon'ble Court deems fit and proper in the circumstances of the case."

3. It has been submitted by learned counsel for the applicant that the applicant has filed the aforesaid complaint against opposite party Nos. 2 to 5 making several allegations. Learned Magistrate has summoned opposite party Nos. 2, 3 and 4 for the offence under Section 420 IPC vide impugned summoning order dated 10.05.2022. It was further submitted that a prima facie case against opposite party No. 5 Master Nagendra was also made out but he was not summoned. It was stated that several other offences were also made out against all the private opposite parties but opposite party Nos. 2 to 4 were summoned only for the offence under Section 420 IPC. It was further stated that the applicant has preferred a criminal revision against the impugned summoning

order dated 10.05.2022, which has also been dismissed by the Session court vide impugned order dated 29.06.2024 without considering facts and position of law. The opposite party No. 5 is dealer of the vehicle company and there is allegation that he has obtained signatures of the applicant on blank papers but despite that he was not summoned. Referring to facts of the matter, it was submitted that both the impugned orders are liable to be set aside.

4. Learned A.G.A. has opposed the application and submitted that the summoning order has already been upheld by the revisional court and that there is no illegality or perversity in the impugned orders.

5. I have considered the rival submissions and perused the record.

6. At the outset it may be mentioned that by impugned order dated 10.05.2022 opposite party Nos. 2, 3 and 4 have been summoned to face the trial for the offence under Section 420 IPC. The applicant has preferred a criminal revision against aforesaid order dated 10.05.2022, which has been dismissed by learned Sessions Judge vide impugned order dated 29.06.2024. It is correct that availing of the remedy of the revision before the Sessions Judge does not bar a person from invoking the power of the High Court under Section 482 Cr.P.C./528 BNSS but it is equally true that the High Court should not act as a second Revisional Court under the garb of exercising inherent powers. While exercising its inherent powers in such a matter it must be conscious of the fact that the Sessions Judge has declined to exercise his revisory power in the matter.

7. In **Deepti alias Arati Rai v. Akhil Rai & Ors**, (1995) 5 SCC 751, the Apex Court held that second revision application, after dismissal of the first one by sessions court is not maintainable and

that inherent power under Section 482 Cr.P.C. cannot be utilized for exercising powers which are expressly barred by the Code. In case of **Laxmi Bai Patel Vs. Shyam Kumar Patel**; 2002 0 Supreme (SC) 283, the Court held:

"3. Before taking up the merits of the case, it would be proper to consider the exercise of jurisdiction under Section 482Cr.P.C. of the High Court in the facts and circumstances of the case. In a case where the sessions court exercising revisional power under Section 397(3)Cr.P.C. has dismissed the revision petition by the aggrieved party, a second revision petition about acceptance of the same party is barred. The position is well- settled that in such a case power under Section 482Cr.P.C. can be exercised by the High Court in rare cases and in exceptional circumstances where the court finds that permitting the impugned order to remain undisturbed will amount to abuse of process of the court and will result in failure of justice."

8. Similarly, in the case of **Dharampal & Ors. v. Ramshri**; 1993 (1) SCC 435, the Hon'ble Supreme Court held that-

" Section 397(3) bars a second revision application by the same party. It is now well-settled that the inherent powers under Section 482 of the Code cannot be utilized for exercising powers which are expressly barred by the Code. Hence, the High Court had clearly erred in entertaining the second revision at the instance of Respondent 1. On this short ground itself, the impugned order of the High Court can be set aside."

9. In the case of **Rajathi Vs. C.Ganesan**; 1999 SCC (Cri) 1118, the Court held as follows:-

"In *Krishnan v. Krishnaveni*(1997 (4) SCC 241 : 1997 SCC (Cri) 544), this Court explained the scope and power of the High Court under Section 482 of the Code. The question before the Court was if in view of the bar of second revision under sub-section (3) of Section 397 of the Code was prohibited, whether inherent power of the High Court is still available under Section 482 of the Code. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person - accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of the process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power under Section 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings."

10. Thus, it is clear that availing of remedy of revision before Sessions Judge under section 399 Cr.P.C./440 BNSS does not bar a person from invoking power of High Court under Section 482

Cr.P.C./528 BNSS but High Court can not act as a second Revisional Court under garb of exercising inherent powers.

11. It is well settled that at the stage of summoning the Magistrate has to carefully scrutinise the evidence brought on record in order to consider whether a prima facie case is made out or not. The Magistrate is not bound to summon the proposed accused persons under all the sections mentioned in the complaint, rather it is to be considered as to what specific offences are made out. Keeping in view the aforesaid legal position, in the instant case it may be seen that the applicant has purchased a motorcycle and the dispute is regarding finance and insurance of the said motorcycle. The Magistrate has summoned the opposite party Nos. 2, 3 and 4 for the offence under Section 420 IPC. The revisional court has considered the entire facts and law and dismissed the revision. No patent illegality or perversity could be shown in the impugned orders. As criminal revision against the summoning order dated 10.05.2022 has already been dismissed by the revisional court vide order dated 29.06.2024, in such situation the interference under Section 528 BNSS can only be made when it is shown that there is grave miscarriage of justice or abuse of the process of the court or the required statutory procedure has not been complied with or there is failure of justice. Applying the principles set out in the judgments referred above to the case on hand, this Court is of the view that there is no compelling circumstance or exceptional circumstance warranting invocation of section 528 BNSS by this Court. Therefore, this application under section 528 BNSS deserves to be dismissed.

12. The application under Section 528 BNSS is hereby **dismissed**.

Order Date :- 5.5.2025/Anand