

Court No. - 52

Case :- APPLICATION U/S 528 BNSS No. - 8261 of 2025

Applicant :- Harimohan Kushwaha

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Dharmendra Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Manju Rani Chauhan,J.

1. Mr. Dharmendra Pratap Singh, learned counsel for the applicant, Mr. Kamal Singh, learned counsel for the opposite party no.2 and Mr. Satendra Tiwari, learned A.G.A. for the State and perused the records.
2. The instant application has been filed to quash the charge sheet dated 04.12.2024 as well as cognizance order dated 28.01.2025 and the entire proceeding of Sessions Trial No.08/2025 (State vs. Harimohan Kushwaha), arising out of Case Crime No.678 of 2024, under Sections 137(2), 87 B.N.S. & Sections 3(2)(5) of S.C./S.T. Act, P.S. Kotwali Orai, District-Jalaun, pending before Special Judge S.C./S.T. Act, Jalaun at Orai.
3. Brief facts of the case are; an FIR was lodged on 02.10.2024 at about 14:02 hours by opposite party no.2 against unknown person with the allegations that his 17 years old daughter Shristi Sivas has left the house on 01.10.2024 at 11 AM for the purpose of purchasing some things required, when she did not return, the opposite party no.2 searched for her along with his relatives and when he could not succeed to search his daughter, he lodged the FIR. He was also apprehended about his minor daughter being enticed away by someone. After investigation charge sheet has been submitted on 04.12.2024 against the applicant and the Court concerned has taken cognizance on 28.01.2025.
4. Learned counsel for the applicant submits that the present FIR has been lodged with false and frivolous allegations. He further submits that daughter of opposite party no.2 in her statement recorded under

Section 180 B.N.S.S. has stated that she is 18 years old. On 01.10.2024 she left her house all alone out of her own sweet will and stayed at District Karoli, Rajasthan. She has stated that when her family members harassed her, she married Harimohan Kushwaha, who is resident of Gohan. She has also expressed that she wants to stay with him. Applicant has not established any physical relationship with her. In her statement recorded u/s 180 B.N.S.S. her date of birth is mentioned as 14.10.2005. In her statement recorded u/s 183 B.N.S.S. she stated that she was tortured by her parents and her father used to beat her by belt. On 30.09.2024, her parents threatened her for life as they were not accepting her relationship with Harimohan Kushwaha. She has also spoken about false FIR lodged by her parents on 30.09.2024 against the applicant. On 01.10.2024 she left her house out of her own sweet will and went to her friend's place Sulekha. On 03.10.2024 at 2 PM, she has performed marriage with Harimohan Kushwaha in temple and went to Lucknow. On 01.10.2024 to 02.10.2024 she stayed with her friend Sulekha at her place. She stated that no wrong act has been done with her. She voluntarily went to live with her husband, and no physical relationship was established by him. She is currently a second year B.A. student. From the statements recorded under sections 180 and 183 B.N.S.S., it is evident that the victim has not made any allegations against the applicant. She is approximately 18 years of age and they have registered their marriage, and the certificate of marriage registration is annexed at page 87. According to the certificate, the applicant Harimohan kushwaha's date of birth is 15.09.1980, indicating that he is 44 years old, while the date of birth of Shristi Sivas is mentioned as 14.10.2005, confirming that she is 18 years old. Accordingly, both are major. In support of his contention, learned counsel for the applicant has relied upon the judgment of this Apex Court in the case of **Mafat Lal and another vs. State of Rajasthan report on 2022 Law Suit(SC) 463** and also relied

upon the judgment of this Court in the case of **Gufran Shaikh @ Gani Munawwar vs. State of U.P. and another** decided on 28.07.2022 passed in Application U/s 482 No.10258 of 2021.

5. Learned counsel for the opposite party no.2 as well as learned A.G.A. on the other hand submit that as per the statement of charge sheet witnesses, prima facie offence is made out. The statement of opposite party no.2 has been recorded in which he has stated about the date of birth of his daughter is 14.10.2006. Accordingly, she is 17 years 11 months and 18 days old. He has also given High School certificate of his daughter to the Investigating Officer as mentioned in his statement itself. He has stated about her daughter being 17 years old. He stated that applicant who is 36 years old has persuaded his daughter in such a manner. Statement of mother of the victim has also been recorded, who spoken about her daughter stating that applicant has enticed away her minor daughter for marriage without taking permission from her parents. An application was given to the Investigating Officer mentioning that opposite party no.2 belongs to S.C./S.T. category. They further submit that minor girl has been enticed away, therefore, the statement of minor girl u/s 180 and 183 B.N.S.S. cannot be relied upon making a case in favour of the applicant. Thus, offence under relevant section is made out.

6. As learned counsel for the applicant has stated on the earlier occasion that the applicant has performed marriage with daughter of opposite party no.2, therefore, on 15.05.2025, the following order was passed:-

"Learned counsel for opposite party no.2 submits that minor daughter of opposite party no.2 has been enticed away by the applicant, who is nearly 44 years of age. He has been informed by his client that applicant has threatened him for dire consequences in case, he has not compromised the matter.

Faced with the above, learned counsel for the applicant states that applicant has performed marriage with daughter of opposite party no.2 and they are living happily as husband and wife.

In such circumstances, let the applicant along with daughter of opposite party no.2 be present before this Court.

Superintendent of Police, District Jalaun is directed to ensure presence of applicant and daughter of opposite party no.2 before this Court on the next date of listing.

Put up this case as fresh on 21.05.2025.

Till the next date of listing, no coercive action shall be taken against the applicant in Session Trial No. 08 of 2025 (State Vs. Harimohan Kushwaha), arising out of Case Crime No. 678 of 2024, under Section 137(2), 87 B.N.S. and 3(2)(5) SC/ST Act, Police Station Kotwali Orai, District Jalaun.

Needless to say that in case counsel for the applicant is not present on the next date, the interim order granted, shall automatically stand vacated.

Registrar Compliance is directed to communicate this order to Superintendent of Police, District Jalaun for necessary information and compliance forthwith."

7. In compliance of the aforesaid order, Harimohan Kushwaha applicant, daughter of opposite party no.2 Shristi Sivas as well as opposite party no.2 Rajkumar are present before this Court.

8. Certain queries were raised by the Court to the aforesaid parties wherein they are answered as follows:-

(1) Applicant Harimohan Kushwaha has answered in following manner:-

(i) He answered that his name is Harimohan Kushwaha, Aged about 38 years and educational qualification is Intermediate.

(ii) He said that his first wife passed away on 02.05.2023. He has three children namely, Vipin, Khushi and Nancy, who are 20, 18 and 12 years old respectively.

(iii) He has already solemnized marriage of his daughter nearly one year ago and his son nearly two years ago.

(iv) He has a workshop of maintaining vehicles. He has also stated before this Court that he used to visit the residence of opposite party no.2 and informant was aware about friendly relation between him and his daughter. He expressed his feeling to opposite party no.2 that he and his daughter want to marry.

(v) He has stated that he was threatened by opposite party no.2, therefore, he was placed in such a situation that in case he married his daughter, he would be implicated in a false case as the present one, and if he did not marry the minor daughter of opposite party no.2, she threatened to commit suicide for which the applicant would have been held responsible, by opposite party no.2. Thus, he has been implicated in the present case to extract money.

(2) Daughter of O.P. No.2 has answered in following manner:-

(i) Shristi Sivas, daughter of opposite party no.2, states before this Court that she was mentally and physically tortured by her parents from the very beginning. She teaches in a private school. She was forced to give her salary to her parents, therefore, she was left with no option but to go with the applicant who used to visit her place.

(ii) She states that she wants to go with her husband. She also states that her father in order to extract money from the applicant was forcing her to implicate the applicant in a false case u/s 64 B.N.S. (Section 376 I.P.C.).

(iii) She was nearly 18 years old at the time of marriage. She states that her date of birth in High School certificate has wrongly been written and now she is nearly 19 years old.

(3). Rajkumar, O.P. No.2, has answered in following manner:-

(i) The opposite party no.2 Rajkumar has denied all the allegations as made by the applicant and his daughter.

9. Before proceeding any further it shall be apt to make a brief reference to the case of **Gian Singh Vs. State of Punjab reported in (2012) 10 SCC 303**, wherein the Apex Court has categorically held that the compromise can be made between the parties even in respect of certain cognizable and non compoundable offences. The relevant portion of the said judgment of the Apex Court reads as follows:-

"57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power 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 accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

10. The Apex Court in **Parbatbhai Aahir alias Parbathbhai Bhimsinghbhai Karmur and others vs. State of Gujarat and another**, (2017) 9 SCC 641, summarizing the broad principles regarding inherent powers of the High Court under Section 482 Cr.P.C. has recognized that these powers are not inhibited by provisions of Section 320 Cr.P.C.

11. The Apex Court in the case of **Narinder Singh and others vs. State of Punjab and others** reported in (2014)6 SCC 466 and also in **State of Madhya Pradesh vs. Laxmi Narayan and others** reported in (2019) 5 SCC 688, has summed up and laid down principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercise its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with criminal proceedings.

12. In the present case, no doubt, offence under Sections 137(2), 87 B.N.S. & Sections 3(2)(5) of S.C./S.T. Act, are not compoundable. However, as explained by Hon'ble Apex Court in **Gian Singh's, Narinder Singh's, Parbatbhai Aahir's and Laxmi Narayan's cases (supra)**, power of High Court under Section 482 Cr.P.C is not inhibited by the provisions of Section 320 Cr.P.C and FIR as well as criminal proceedings can be quashed by exercising inherent powers under Section 482 Cr.P.C, if warranted in given facts and circumstances of the case for ends of justice or to prevent abuse of the process of any Court, even in those cases which are not compoundable where parties have settled the matter between themselves.

13. In the case of **Madan Mohan Abbot vs. State of Punjab**, reported in (2008) 4 SCC 582, the Apex Court emphasized and advised that in the matter of compromise in criminal proceedings, keeping in view of nature of this case, to save the time of the Court for utilizing to decide

more effective and meaningful litigation, a common sense approach, based on ground realities and bereft of the technicalities of law, should be applied.

14. In the aforesaid judgments, the Apex Court has categorically held that compromise can be made between the parties even in respect of certain cognizable and non compoundable offences. The present case is also a case where two societal interests are in clash. To punish the offenders for a crime, involved in present case, is in the interest of society, but, at the same time, husband is taking care of his wife and in case, husband is convicted and sentenced for societal interest, then, wife will be in great trouble and their future would be ruined. It is also in the interest of society to settle and resettle the family for their welfare.

15. Seeing peculiar circumstances where the daughter of opposite party no.2 has married a man who is double of her age but she herself states that she is nearly 18 years old. She has not uttered a single word against the applicant. In case any punishment is given to the applicant, her life will be ruined. It was her own decision to marry such a person with whom she is now staying happily after marriage with the entire family of husband wherein children of applicant are also residing together, have welcomed her.

16. The Court sitting in this jurisdiction has time and again seen that the person belonging to the special category are trying to take benefit of their caste, this also appears one a such situation where statements of applicant and daughter of opposite party no.2 in case taken into consideration proves the reality of present scenario where opposite party no.2 in order to extract money had lodged the present case.

17. It is admitted that the applicant has married the daughter of opposite party no.2 after death of his first wife. The daughter of opposite party no.2 is nearly 18 years old and married the applicant out

of her own sweet will. Therefore, no useful purpose shall be served by prolonging the proceedings of the above mentioned criminal case as the same will ruin happy married life of the couple.

18. Accordingly, in view of the statement given by Shristi Sivas, daughter of opposite party no.2 before this Court, the proceedings of charge sheet dated 04.12.2024 as well as cognizance order dated 28.01.2025 and Sessions Trial No.08/2025 (State vs. Harimohan Kushwaha), arising out of Case Crime No.678 of 2024, under Sections 137(2), 87 B.N.S. & Sections 3(2)(5) of S.C./S.T. Act, P.S. Kotwali Orai, District-Jalaun, pending before Special Judge S.C./S.T. Act, Jalaun at Orai, are hereby **quashed**.

19. The application is, accordingly, **allowed**. There shall be no order as to costs.

20. A copy of this order be certified to the lower court forthwith.

Order Date :- 21.5.2025

Rahul.