

Court No. - 75

Case :- APPLICATION U/S 528 BNSS No. - 10668 of 2025

Applicant :- Vinay

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

Counsel for Applicant :- Surendra Kumar Tripathi

Counsel for Opposite Party :- G.A.,Gaurav Srivastav,Rajesh Kumar Srivastava

Hon'ble Vikas Budhwar,J.

1. Heard Shri Surendra Kumar Tripathi, learned counsel for the applicant and Sri Sudhir Kumar Chandraul, learned AGA for the State as well as Shri Rajesh Kumar Srivastava, counsel for the opposite party no. 2.

2. This application under Section 528 BNSS has been filed by the applicants to quash the impugned summoning order dated 01.03.2024 passed by Special Judge (POCSO Act, Exclusive Court)/Additional Sessions Judge, Court no. 27, Agra as well as entire proceeding of Complaint Case no. 202 of 2023 (Suman Bharti Vs. Vinay), Under section 452, 354, 504, 506 I.P.C. & 7/8 Protection of Children from Sexual Offences Act, 2012, Police Station- Lohamandi, District-Agra.

3. The case of the applicant is that a first information report was lodged by the opposite party No. 2 on 23.07.2019 being FIR No. 0211, under Sections 452, 504, 306, 354 IPC against the applicant with an allegation that the opposite party No. 2, first informant/ complainant on 15.06.2019 at 8:30 in the night was with her children in the house and the applicant herein barged into the house and with ill intentions, dragged the victim who happened to be the daughter of the opposite party No.2, she made hue and cry,

when the applicant herein pressed the breast of the victim quite a number of times, pursuant where to the marks stood appeared and the applicant herein had beaten the face (cheeks). The opposite party No. 2 with the aid of Belan made a blow upon the applicant herein he ran away threatening that he would never lead the opposite party No. 2 left peacefully. The opposite party No. 2 alleges that she had preferred complaint before the police authority but no FIR was lodged and the victim is suffering from mental trauma as she is fearing that something bad will happen and the applicant herein has threatened that he would sprinkle acid upon the face of the victim pursuant where to the FIR was lodged. Learned counsel for the applicant submits that statements under Section 161 and 164 of the Cr.P.C. were recorded and thereafter on 19.10.2021, a final report came to be submitted by the Investigating Officer that there was no evidence available on the occurrence of the alleged incident. A protest petition came to be filed by the opposite party No. 2 on 19.12.2022 pursuant where to the case transferred into a complaint case, the statement of the opposite party No. 2, first informant- complainant was recorded followed by the statement of the victim under Section 202 Cr.P.C. and thereafter on 01.03.2024, the applicant came to be summoned under Sections 452, 354, 504, 506 IPC read with Section 7/8 of the POCSO Act on 01.03.2024 by the Court of Special Judge, POCSO (Exclusive Court)/ Additional Sessions Judge, Court No. 27 Agra in Complaint/ Warrant Case No. 202 of 2023.

4. Questioning the same, the applicant has been filed the present application.

5. Learned counsel for the applicant has submitted that the entire allegations are sought to be levelled in the first information report

are false and incorrect and have no legs to stand. Submission is that no such incident occurred. Further submission is that had the victim been subjected to medical examination, the truth would have been surfaced and in absence of any medical examination, the entire prosecution theory falls. It is also contended that post lodging of the first information report, statements under Sections 161 and 164 of the Cr.P.C. was recorded and thereafter on 19.10.2021, the final report came to be submitted after thorough investigation, however, now without there being any evidence or basis, the case is to be transformed into a complaint case and now the applicant has been summoned.

6. Contention is to the extent that the accused-applicant as well as the complainant and the alleged victim are family members and the complainant/ opposite party No. 2 is the real aunt of the applicant as well as the alleged victim is real cousin sister of the applicant and between the parties, there is civil dispute in this regard with respect to the properties of one Gokul who happens Tau of applicant and alleged victim and since the said Gokul was issueless and his wife already died long back and during his lifetime, he was living with the applicant's family and being blessed with the service of the applicant's family, he had executed a registered will deed in favour of the father of the applicant with respect to his self-earned properties i.e. house as well as shop on 11.03.2019, however, the applicant- complainant instituted suit for cancellation of the Will deed on 11.03.2019 before the Civil Judge (Junior Division), Agra as Original Suit No. 288 of 2019 (Smt. Suman Bharti v. Chandrabhan) which is pending. Apart from this, the father of the applicant, namely, Mr. Chandra Bhan Singh has also instituted suit for permanent injunction against the complainant, her husband and others in the court of Civil Judge

(Sr. Division) Agra being O.S. No. 987 of 2019 (Mr. Chandra Bhan Singh v. Mr. Chimman Lal and others). Submission is that the parties are litigating between each other before the competent court, however, the opposite party in order to settle, the score and to dictate terms and also to exert pressure has lodged the present complaint, pursuant where to the applicant has been summoned. Thus, according to the learned counsel for the applicant, the present case is a classic case of victimization, harassment and malicious prosecution. Lastly, it is submitted that the court below has summoned the applicant in a routine manner without according any satisfaction regarding *prima facie* application of the attraction of the said penal sections.

7. Shri Rajesh Kumar Srivastava, learned counsel for the opposite party No. 2 and learned AGA while countering the submissions so made by the learned counsel for the applicant has submitted that from a bare look of the allegations contained in the complaint *vis-a-vis* the statements under Sections 200 and 202 of the Cr.P.C. would lead to go to show that *prima facie* offences are made out. There are no material contradictions in the statements of the witnesses under Sections 200 and 202 Cr.P.C. *vis-a-vis* the allegations in the complaint. According to them, mere non-subjection of the victim to medical examination would not be fatal as it could not be relevant factor at the stage of summoning.

8. I have heard learned counsel for the parties and gone through the records carefully.

9. Apparently, in the present case at hand at the instance of the applicant, challenge has been raised to an order whereby the applicant has been summoned under Sections 452, 354, 504, 506 I.P.C. & 7/8 Protection of Children from Sexual Offences Act,

2012, in order to determine as to whether the summoning order suffers from any infirmity or not, there are various parameters which have to be adhered to. Amongst others one of which inevitably would be the nature of the allegations in the complaint as well as the statements under Sections 200 and 202 Cr.P.C. In case, the allegations in the complaint *prima facie* show that offences are made out and there is no material contradictions in the statements under Sections 200 and 202 Cr.P.C. and the witnesses support the prosecution theory then the Court would be reluctant in interfering at the summoning stage.

10. Notably, in the present case, the complainant who happens to be the mother of the victim who is a minor girl had lodged a first information report on 23.07.2019, under Sections 452, 504, 506, 354 IPC with an allegation that on 15.06.2019 at 8:30 in the night, when the opposite party No. 2/ complainant was with her children then the applicant herein barged into the house of the opposite party No. 2/ complainant and dragged the victim and for several times, they pressed the breast of the victim and also with the help of the nail scratch the chest pursuant where to marks appeared and also beaten the victim on her face (cheeks) with hue and cry and was made, applicant ran away, opposite party No. 2 came to rescue the victim then the applicant ran away threatening for dire consequences and also allegation is that opposite party No. 2, victim threatened of being made a victim of acid attack. On the basis of the statements under Section 161 and 164 Cr.P.C., a final report came to be submitted on 19.10.2021 and post lodging of a protest petition, the case transformed into a complaint case which after recording of statements under Sections 200 and 200 Cr.P.C., the applicant came to be summoned. A close look of the statements under Sections 200 and 202 Cr.P.C. of the complainant would

reveal that the complainant had made a pinpointed allegations against the applicant for commission of the offences and so much so, the victim has also supported the prosecution theory while naming the applicant and also specifically pointing out that the applicant had committed offences on 15.06.2019 while pressing the breast, biting on the face (cheeks) and scratching the breast and also dragging the victim. Since the statements under Sections 200 and 202 of the Cr.P.C. does not appear to be in contradiction or variation with the allegations in the complaint, thus, the case becomes triable.

11. As regards, the argument of the learned counsel for the applicant that once post lodging of the first information report on the basis of the statements under Sections 161 and 164 Cr.P.C., a final report came to be submitted then there was no occasion for summoning the applicant is concerned, the same is not convincing, particularly, when a protest petition came to be filed by the opposite party No.2/ complainant and on the basis of the statements under Section 200 and 202 Cr.P.C., the applicant has been summoned. At this stage of summoning, what would be required, would be the allegations in the complaint and the statements under Section 200 and 202 Cr.P.C. In case, they are not in contradiction or variation then the case becomes obviously triable. Insofar as the argument sought to be canvassed by the learned counsel for the applicant that prosecution theory is bound to fail, particularly, when the victim was not subjected to medical examination is concerned, the same would not be a factor to hold the summoning order to be suffering from any legal infirmity, particularly, when the impact and the effect of the ramification of non-subjection of the victim to the medical examination would be a factor which would be considered at this stage when the trial

commences, when a decision is to be taken as to whether the accused is to be acquitted or convicted. With respect to argument that the parties are themselves litigating before the civil courts regarding property and Will and to exert pressure and to dictate terms, malicious prosecution by way of lodging of the complaint has been resorted to is concerned, this Court is not required to delve into the said issue as the same at best is a defence consideration whereof would be required only at a stage, when the trial commences.

12. There is another facet of the matter that is with regard to the Section 29 of the POCSO Act, 2012, according to which, there is a presumption as to certain offences, according to which, where a person is prosecuted for committing or abating or attempting to commit any offence under Sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved. The words employed by the legislature "the contrary to be proved" is of relevance, thus, it cannot be ruled out that trial is not to be conducted"

13. Nonetheless, the Hon'ble Apex Court in the case of ***M/s Neeharika, Infrastructure Pvt. Ltd. vs. State Of Maharashtra and others*** reported in ***AIR 2021 SC 192*** and the paragraph no. 23 culled out the following propositions of law which is enumerated hereinunder:-

"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."

14. Cumulatively, analyzing the case from the four corners of law, the Court finds that no good ground is made out for interference at this stage, accordingly, the application is **rejected**.

15. Needless to point out that passing of this order may not be construed to be any expressions on the merits of the matter as it is open for the trial court to proceed with the matter and to decide the

same strictly in accordance with law with utmost expedition.

Order Date :- 11.7.2025

A. Prajapati