



2025:AHC:164229

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**APPLICATION U/S 482 No. - 30220 of 2019**

Intiyaz @ Intiyaz

.....Applicant(s)

Versus

State of U.P.

.....Opposite  
Party(s)

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Counsel for Applicant(s) : M J Akhtar, Sri V.M. Zaidi , Senior Advocate

Counsel for Opposite Party(s) : G.A., Shahzad Alam

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**Court No. - 75**

**HON'BLE VIKAS BUDHWAR, J.**

1. Heard Sri V.M. Zaidi assisted by Sri M.J. Akhtar, learned counsel for the applicant as well as Sri S.K. Singh, learned AGA for the State and Sri Shahzad Alam for the opposite party no. 2.

2. A joint statement has been made by learned counsel for the parties that they do not propose to file any affidavit and the application be decided on the basis of the documents available on record. With the consent of the parties, the application be decided at the admission stage.

3. This application u/s 528 of BNSS has been preferred to quash the charge sheet dated 09.07.2018 and entire proceedings of Criminal Case No. 205 of 2018 (State Vs. Intiyaz) under Section 376-D, 506 IPC and 3/4 of POCSO Act, arising out of Case Crime No. 797 of 2017, P.S. Kharkhauda, District Meerut, pending in the court of Special Judge, POCSO, Meerut.

4. The case of the applicant is that a first information was lodged by the opposite party no. 2 against the applicant herein along with two other co-accused namely Mallu and Sameer under Section 376-D, 506 IPC read with Section 3/4 of POCSO Act being FIR No. 0797 of 2017 on 27.12.2017 with an allegation that the opposite party no. 2 is a minor whose father and mother has expired aged about 16 years on the date of lodging of the first information report and she has two brothers, both of them are elder to her being Saiju Goonga and Mukim Kamakal and on account of their physical disability, the share of the property so devolved

upon them has been bequeathed in favour of the uncle Islamuddin. Allegation is that the applicant herein is of the same community of the same village along with the co-accused Mallu used to take advantage of the weak position of the opposite party no. 2 when the mother was alive on the garb of helping to get the land in question for mutating their name and for the said purpose, they used to take lacs of rupees. They also introduced some other persons for the purposes of helping them in getting their land recorded in their name and the applicant herein along with Mallu at 2:30 in the afternoon wherein Sameer was already present had offered a cup of tea which contains some intoxicating material and outraged the modesty of the opposite party no. 2 and also prepared an obscene video and they used to blackmail. Post lodging of the complaint and recording of the statements, a charge sheet came to be submitted against the applicant on 09.07.2018 in Criminal Case No. 205 of 2018 under Sections 376d, 506 IPC and 3/4 of the POCSO Act in Case No. 797 of 2017, the same was subject matter of challenge at the instance of the applicant while filing Application under Section 482 No. 38514 of 2018 which came to be dismissed on 27.10.2018 thereafter, the present application had been preferred in which on 08.08.2019 the following orders were passed.-

*"Heard Sri Susheel Kumar, learned counsel for the applicant and Sri G.P. Singh, learned A.G.A. for the State and perused the record.*

*This application under Section 482 Cr.P.C. has been filed with a prayer to quash the charge sheet dated 9.7.2018 and cognizance order dated 1.9.2018 in Case No. 701 of 2018 (State Vs. Mallu and other), arising out of Case Crime No. 797 of 2017, u/s 376D, 506 I.P.C. & 3/4 POCSO Act, P.S. Kharkhauda, District Meerut, pending in the court of Special Judge/ POCSO Meerut.*

*Learned counsel for the applicant has contended that the opposite party no. 2, who is alleging herself to be victim of this case, has falsely implicated the accused-applicant in this case, who is cousin brother of the victim, due to some property dispute. It is further stated that the name of the accused-applicant has not been taken by the opposite party no. 2 in her statement u/s 161 Cr.P.C. regarding rape. He further submitted that if the proceedings are allowed to continue that would amount to abuse of process of law.*

*Learned A.G.A. has vehemently opposed the prayer for quashing stating that in statement u/s 164 Cr.P.C. the victim has clearly taken the name of accused-applicant, who has raped the opposite party no. 2 along with other persons namely Mallu, hence*

*prayer for quashing the same should be refused.*

*Having heard the learned counsel for the parties and after perusing the entire material available on record, this court has to see as to whether the applicant has made out a case of quashing the proceedings in the above mentioned case.*

*Before we deal with the respective contentions advanced on either side, this Court deems it appropriate to have a thorough look at Section 482 Cr. P.C., which reads as under:*

*"482. Saving of inherent powers of High Court. ? Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of injustice."*

*This court would like to rely upon the interpretation of this Section made in Rishi Pal Singh vs State of U.P., (2014) 7 SCC 215 by the Hon'ble Apex Court, which is as follows :*

*"10. ....*

*A bare perusal of Section 482 Cr. P.C. makes it crystal clear that the object of exercise of power under this Section is to prevent abuse of process of court and to secure ends of justice. There are no hard and fast rules that can be laid down for the exercise of the extraordinary jurisdiction, but exercising the same is an exception, but not a rule of law. It is no doubt true that there can be no straitjacket formula nor defined parameters to enable a court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The courts have to be very circumspect while exercising jurisdiction under section 482 Cr. P.C..*

*11. This court in Medchl Chemicals and Pharma (P) Ltd. Vs. Biological E. Ltd., (2000) 3 SCC 269, has discussed at length about the scope and ambit while exercising power under Section 482 Cr. P.C. and how cautious and careful the approach of the courts should be. We deem it apt to extract the relevant portion from the judgment, which reads: (SCC p. 272, Para 2)*

*"2. Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge- sheet quashed is an exception rather than a rule and the case for quashing at the initial stage must have to be treated as the rarest of rare so as not to scuttle the prosecution. With the lodgement of first information report the ball is set to roll and thenceforth the law takes its own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the court on a perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge- sheet on the face of it does not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situation as is*

*required under the law. Frustrated litigants ought not to be indulged to give vent to their vindictiveness through a legal process and such an investigation ought not to be allowed to be continued since the same is opposed to the concept of justice, which is paramount".*

*12. This court in a plethora of judgements has laid down the guidelines with regard to exercise of jurisdiction by the courts under Section 482 Cr. P.C.. In State of Haryana vs Bhajan Lal, 1992 Supp(1) SCC 335 this court has listed the categories of cases when the power under sections 482 can be exercised by the court. These principles or the guidelines were reiterated by this court in (1) CBI vs Duncans Argo Industries Ltd, (1996) 5 SCC 591, (2) Rajesh Bajaj vs the State (NCT of Delhi), (1999) 3 SCC 259, and Zandu Pharmaceutical Works Ltd vs Mohd. Sharaful Haque, (2005) 1 SCC 122. This court in Zandu Pharmaceutical Works Ltd observed that:*

*"The power under sections 482 of the court should be used sparingly and with circumspection to prevent abuse of process of court, but not to stifle legitimate prosecution. There can be no two opinions on this, but, if it appears to the trained judicial mind that continuation of prosecution would lead to abuse of process of court, the power under section 482 of the Code must be exercised and proceedings must be quashed.*

*Also see Om Prakash vs State of Jharkhand, (2012) 12 SCC 72, SCC p. 95, Para 43.*

*13. What emerges from the above judgements is that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made in the complaint prima facie establish the case. The courts have to see whether the continuation of the complaint amounts to abuse of process of law and whether continuation of the criminal proceeding results in miscarriage of justice or when the court comes to a conclusion that quashing these proceedings would otherwise serve the ends of justice, then the court can exercise the power under Section 482 Cr. P.C. While exercising the power under the provision, the courts have to only look at the uncontroverted allegation in the complaint whether prima facie discloses an offence or not, but it should not convert itself to that of a trial court and dwell into the disputed questions of fact."*

*Perusal of the F.I.R. indicates that the accused-applicants are alleged to have beaten the opposite party no. 2 with lathi, danda & axe and serious injuries are also alleged to have been caused to the opposite party no. 2. It is also recorded in the F.I.R. that medical examination was also conducted, although no injury memo has been annexed by the accused-applicants.*

*In view of above discussion, this court has come to an irresistible conclusion that continuation of criminal proceedings against the applicant for commission of the alleged offence under the aforementioned section is not an abuse of process of law. On consideration of allegations made in the case it is found by the court below that the allegations were supported by the prosecution witnesses and necessary ingredients of offence were made out, therefore the conclusion that a prima facie case was made*

*out against the applicant, does not suffer from any lacuna and the prosecution could not be held to be vexatious or oppressive.*

*Accordingly, the prayer for quashing the proceedings is refused and the application u/s 482 Cr.P.C. is dismissed."*

5. Learned counsel for the applicant has submitted that a short counter affidavit came to be filed by the opposite party no. 2 sworn by her, post attainment of majority when she was 22 years old wherein in paragraph no. 3 to 7, the following was averred.-

"3. That the opp.party no.2 and her minor brother at the time of lodging the first information report residing with their real uncle and aunty since the parents of the opp.party no.2/deponent were expired leaving behind the opp.party no.2 and her minor disabled brother. The father of the opp.party no.2/deponent has also having his properties in the village. The uncle of the opp.party no.2/deponent has also got transfer with the same in his favour by way of will. The opp.party no.2/deponent at the time of death of her parents was aged about 18 years old. The uncle and aunty of opp.party no.2/deponent taking advantage of the aforesaid circumstances have filed original suit no.565 of 2018 against one Islamuddin who had purchased a piece of land from the mother of the opp.party no.2, with a view to grab the property left by her father.

4. That the uncle and aunty of the opp.party no.2 have also succeeded to falsely implicate the applicant and other co-accused persons by getting registration of the aforesaid case against them on the basis of the first information report lodged by the opp.party no.2.

5. That the opp.party no.2 after seeing the behavior of her uncle and aunty and their intention to grab the property left by her parents, she became conscious and came to know that the first information report of the present case was also got registered by them in the name of the opp.party no.2 by falsely implicating the applicant and other co-accused persons. The applicant happens to be relation of opp.party no.2 who throughout supported the family of opp.party no.2. The other relation of applicant and opp.party no.2 have also intervene in the said dispute and have settled the same outside the court. The opp.party no.2 is also will to get herself married with the applicant. The family members of the applicant have also agree for the same.

6. That the opp.party no.2 in view of the aforesaid facts and circumstances do not want to pursue the criminal case which is pending against the applicant. She has also made her statement before the court below in sessions trial in Special Case No.70/2018 by supporting the accused persons, on account of which the court below has also acquitted the co- accused Mallu vide its judgment and order dated 18-5-2019. The opp.party no.2 also did not challenged the same in any court of law.

7. That in view of the aforesaid facts and circumstances of the case, the opp.party no.2 do not want to prosecute the applicant in the criminal case no.205/2018 State Vs. Imtiyaz pending in the court of learned Special Judge POCSO Act Meerut. The Hon'ble Court may be pleased to take into consideration the averments made in the present short counter affidavit filed on behalf of opp.party no.2 and pass an appropriate order. The opp.party no.2 has no objection in case the Hon'ble Court may be pleased to set aside the entire proceeding of the aforesaid case pending against the applicant before the court below, or be pleased to pass such other further order which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case. Otherwise, opp.party no.2/deponent shall suffer irreparable loss and injury."

6. A rejoinder affidavit came to be filed by the applicant in which in paragraph no. 5, 6 and 7, the following was averred.-

"5. That the contents of paragraph no.5 and 6 of the counter affidavit are not admitted and empathically denied, in reply thereof it is submitted that the averment made in the original affidavit are reiterated and reaffirmed. It is however further submitted that from the evidence on record, the age of the opposite party no.2 was found 21 years old, she has also got herself married with the applicant and is living happily with the applicant as his legally wedded wife. The true copy of the Nikahnama of the marriage which had taken place between the applicant and the opposite party no.2 is being filed herewith and marked as Annexure No.RA-1 to this affidavit.

6. That in reply to the contents of paragraph no. 7, 8 and 9 of the counter affidavit, it is submitted that the averment made in the paragraphs of the original affidavit are reaffirmed, it is however further submitted that the opposite party no.2 has also filed a short counter affidavit in the aforesaid 482 application disowning the prosecution case and admitting her relationship with the applicant. It is however further submitted that in view of the facts stated in the original affidavit as well as the counter affidavit filed on behalf of the opposite party no.2, now who is legally wedded wife of the applicant and is residing with the applicant, it is clear that the allegations made in the para under reply are not correct and false.

7. That the contents of paragraph no.10 of the counter affidavit are not admitted and empathically denied, in reply it is submitted that the averment made in the paragraphs

of the original affidavit are reiterated and reaffirmed, it is however further submitted that the applicant and the opposite party no.2 are major, they have solemnized their marriage and are happily residing as husband and wife, they have no grievance with each and other, therefore, in view of the said fact the co-accused persons who were involved in the aforesaid case along-with the applicant were also acquitted by the court below on the basis statement of the opposite party no.2 recorded in the session trial alleged in the First Information Report, therefore in view of the co-accused persons by disowning the prosecution story said fact, the present application is also maintainable under the change circumstances. The proceedings of the session trial which are pending against the applicant before the court below are also not maintainable and in case the further proceeding of the session trial which is pending against the applicant are permitted to continue, the same will amount misuse of process of law and miscarriage of justice, therefore this Hon'ble Court may be pleased to allow the aforesaid application and to quash the aforesaid proceedings which is pending against the applicant, or pass such other and further order, otherwise applicant shall suffer irreparable loss."

7. Learned counsel for the applicant has also invited the attention of the Court towards a Criminal Misc. Application No. 10 of 2025 dated 06.05.2025 so as to contend that with respect to the co-accused Mallu, the trial came to be instituted being Special Criminal Case No. 70 of 2018 (State vs. Mallu) in Case Crime No. 797 of 2017 under Section 376D, 506 IPC read with Section 3/4 of the POCSO Act in which Special Judge, POCSO Act/Additional Session Judge, Court No. 8, Meerut on 18.05.2019 honourably acquitted the co-accused Mallu under Section 376D, 506 IPC read with Section 3/4 of POCSO Act, para 12 of the same is being quoted hereinbelow.-

"12. अभियोजन की ओर से आरोप को साबित करने हेतु पी०डब्लू-1 के रूप में वादिनी मुकदमा / पीड़िता कु० साजिया ने अपने मुख्य बयान में सशपथ कथन किया है कि घटना के समय मेरी उम्र 16 वर्ष थी। मेरे माता पिता का देहान्त हो गया है। मेरे दो भाई हैं। बड़ा भाई गूंगा है व छोटा कम अकल हैं। इसी कारण हमारे दादा ने हमारे हिस्से की जमीन की वसीयत हमारे चाचा के हक में कर रखी हैं। गांव के इम्टयाज व मल्लू जब मेरी माँ जीवित थी, वसीयत खारिज कराने की बात कहकर लाखों रुपये ऐंठ चुके हैं और घटना से करीब चार माह पूर्व समीर से मिलाया और कहा कि ये तुम्हारी जमीन वापस दिला देंगे। इसी कारण तीनों का मेरे घर आना जाना हो गया। घटना से करीब एक सवा महीने पूर्व मल्लू व इम्टियाज उसे बहला फुसलाकर मल्लू के घर ले गये वहां समीर पहले से मौजूद था। वहां तीनों ने मुझे चाय पीने को दी जिससे मैं बेहोश हो गयी तो तीनों ने मेरे साथ बलात्कार किया और अश्लील विडियो भी बनाया। ये तीनों आये दिन मेरे साथ बलात्कार करते रहे और मुंह खोलने पर वीडियो नेट पर डालने की धमकी देने लगे। मैंने थाना खरखौदा में इस घटना की तहरीर अंकित करायी थी। साक्षी ने तहरीर प्रदर्श का पर अपने हस्ताक्षर प्रमाणित किये है। पीड़िता ने अपने बयान धारा 164 प्रदर्श क2 पर अपने हस्ताक्षर व फोटों एवं इबारत होना स्वीकार किया है परन्तु जिरह में इस साक्षी ने कहा है कि तहरीर मैंने स्वयं बोलकर नहीं लिखाई थी। तहरीर मुझे पढ़कर नहीं सुनाई थी। तहरीर मेरे चाचा चाची इस्लामुद्दीन व जरीना व फूफा दिलशाद व फुफी हसीन ने लिखावाई थी। जमीन की वसीयत भी इन्हीं चाचा चाची ने कराई थी। मेरे फूफा फूफी उनसे मिले हुए थे। आगे साक्षी ने कहा है कि तहरीर मेरी माँ के देहान्त के

बाद लिखाई थी। हाजिर अदालत मुलजिम मल्लू व उसके साथियों ने मेरे साथ बलात्कार नहीं किया था न ही चाय में नशा मिलकर पिलाया था न अश्लील वीडियो बनाई थी न नेट पर डालने की धमकी दी थी। मेरे बुआ के लड़के के साथ मेरा रिश्ता हो गया था। उसका नाम आमिर है और उसी ने मेरे साथ बलात्कार किया था और किसी ने मेरे साथ कोई गन्दा काम नहीं किया। मल्लू ने मेरी मां से पैसे नहीं हड़पे थे न ही जान से मारने की धमकी दी थी। मजिस्ट्रेट को दिये गये बयान के सम्बन्ध में इस साक्षी ने कहा है कि इन चारों ने मेरे भाई को बन्धक बनाया हुआ है। इसीलिये मैंने डर की वजह से मल्लू व उसके साथियों का नाम अपने बयान में लिया था। मुल्लू व उसके साथियों ने मेरे साथ बलात्कार नहीं किया था और ना ही कोई पैसा मेरी मां से हड़प लिया था। मुलजिम इम्तियाज मेरे ताऊ का लडका है। मल्लू व इम्तियाज ने जब हमारी जमीन मेरे चाची ने हड़प ली थी. तो हमारी मदद की थी इसलिये तहरीर में इनके नाम लिखा दिये थे। आज मैं अपनी भाभी नसीम बानों के साथ न्यायालय में आयी हूँ। साक्षी ने बयान न्यायालय में बिना डर व दबाव के देना बताते हुए कहा है कि जो सही बात है वह आज मैंने न्यायालय में बता दी हैं। इस साक्षी ने अपनी जिरह में अभियुक्त द्वारा अपने साथियों के साथ मिलकर बलात्कार किये जाने के तथ्य से स्पष्ट रूप से इन्कार किया है। इस प्रकार इस साक्षी की

साक्ष्य से अभियोजन कथानक को कोई बल नहीं मिलता है।"

8. Learned counsel for the applicant has submitted that now there is no dispute between the parties, particularly when the opposite party no. 2 has solemnized marriage with applicant post attainment of majority and, thus, the proceedings be quashed as the entire proceedings have initiated on the basis of false allegations at the instance of the grand father of the opposite party no. 2. Reliance has been placed upon the decision of Hon'ble Apex Court in **Madhukar and others Vs. State of Maharashtra and others arising out of SLP (Criminal) No. 7212 of 2025** decided on 14.07.2025 **Application u/s 482 No. 41580 of 2022 (Fakre Alam @ Shozil Vs. State of U.P. and three others)** decided on 06.06.2023 and the decision in **Application u/s 528 No. 14052 of 2025 (Akash Vs. State of U.P. and another)** decided on 12.05.2025.

9. Learned counsel for the opposite party no. 2 has not disputed the said factum regarding marriage of the opposite party no. 2 with the applicant. According to him, there are no dispute whatsoever.

10. Learned AGA submits that a compromise needs to be filed before the court below by the parties and there needs to be a verification about the fact that whether the marriage has been solemnized or not.

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

12. Though the FIR alleges allegations upon the applicant under Section 376D, 506 IPC read with Section 3/4 of the POCSO Act against the

applicant and one Mallu and the Mallu has been acquitted by the court below and due to the passing of the interim order in the present case, the proceedings could not be allowed to be continued and it is the stand of the applicant and the counsel for the opposite party no. 2 that they have solemnized marriage and there is no dispute between them, however, looking into the fact that these aspects needs to be verified including the aspect relating to the marriage coupled with the other aspects, thus, present application is being decided and respectfully following the judgment and in the background of the judgment of Hon'ble Apex Court in **Akash (supra), (Fakre Alam @ Shozil (supra) and Madhukar (supra).**

13. The application is being decided in the following terms.-

(a) the applicant (parties) shall appear before the court below along with the compromise application and the documents to substantiate the marriage by **14.10.2025**; (b) the court below shall proceed to verify the compromise after ascertaining the marriage certificate stood solemnized with the opposite party no. 2.

14. Till the verification is done in the compromise application so submitted by the parties, no coercive action shall be taken against the applicant in the proceedings of Criminal Case No. 205 of 2018 (State Vs. Imtiyaz) under Section 376-D, 506 IPC and 3/4 of POCSO Act, arising out of Case Crime No. 797 of 2017, P.S. Kharkhauda, District Meerut, pending in the court of Special Judge, POCSO, Meerut.

15. The protection accorded to the applicants is only available subject to compliance of the terms and conditions and timeline as provided herein and in case of default, the order shall stand vacated without reference to the Bench. The parties are free to take legal recourse post outcome of the compromise.

**(Vikas Budhwar,J.)**

**September 15, 2025**  
Rajesh