

Court No. - 73

Case :- APPLICATION U/S 528 BNSS No. - 15519 of 2025

Applicant :- Jaeem And 2 Others

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Durga Shanker Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Vikas Budhwar,J.

1. Vakalatnama filed by Sri Balvir Singh, (AOR No.A/B 1076/2023) on behalf of complainant/opposite party no.2 is taken on record.

2. Heard Sri Durga Shanker Mishra, learned counsel for the applicants, Sri Moti Lal, learned A.G.A. for the State and Sri Balvir Singh, (AOR No.A/B 1076/2023) learned counsel for the complaint/opposite party no.2.

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

4. The case of the applicants is that a complaint was lodged by the complainant/opposite party no.2 on 28.2.2024 against the applicants, who are three in number and two to three unnamed accused with an allegation that the opposite party no.2 is the resident of district Budaun and mother of a minor daughter/victim, who is 16 years of age. It is alleged that on 20.1.2024 at about 5.00 in the evening, the applicants along with two other unnamed accused armed with country-made pistol had come to the house of the complainant and the applicant no.1 placed the pistol on the chest of the complainant and the other co-accused namely, Jameen and Jaid with ill intentions caught hold the minor daughter of the complainant/victim and they started doing indecent activities while touching the private parts and also tore the cloths of the victim and attempted to commit rape and two unnamed accused were standing on the door and guiding the other accused while cautioning them about the arrival of any visitor. When the minor/victim started screaming then one Musharrat son of Rahat Ali along with others came and saw the minor victim who was in a naked condition and

the accused thereafter ran away. The incident was reported to the police after taking the victim, however, no first information report was lodged, a complaint was also lodged to the Senior Superintendent of Police, Budaun and thus proceeding under Section 156(3) of the Cr.P.C. was initiated on 28.2.2024.

5. The statements of the complainant under Section 200 of the Cr.P.C. followed by the statement of the victim under Section 202 Cr.P.C. and one of the witnesses Aakil was recorded and thereafter the notice was served upon the accused at a pre-summoning stage and a first proviso to Section 223 of the B.N.S.S. to which the accused tendered their reply and after considering them, the court of Additional Sessions Judge/Special Judge, POCSO Act, Budaun summoned the applicants under Sections 333, 64, of the B.N.S.S. and Section 3/4 of the POCSO Act on 27.2.2025.

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

7. Learned counsel for the applicants has submitted that the entire story sought to be cooked up by the opposite party no.2 is nothing but a bundle of lies just in order to rope in the applicants. He further submitted that though in the complaint lodged on 28.2.2024, the allegation is regarding attempting to commit bad act/rape but in the statement of the victim under Section 202 of the Cr.P.C., the victim has deposed that not only she was molested but rape was committed by Jaid and Jaeem the accused.

8. Contention is that even in the statements under Section 200 of the Cr.P.C. of the complainant there is no allegation of commission of the rape, thus, it is a classic case wherein the entire prosecution theory stands eroded in view of major contradictions and variations in the statements. It is also contended that the victim was not subjected to medical examination and in case medical examination would have been done then the entire truth would have come to surface and in absence of any medical examination, there is no iota of any evidence worth consideration that any criminality so as alleged has been committed.

9. Argument is that the applicants faction and the opposite party no.2 faction are relatives and next door neighbours, however, an incident took place on 25.1.2024 at about 9 O'clock in the morning wherein the sister of the applicants namely, Hira sustained injuries in a ear, thereafter on the intervention and good books of some respectful persons, a Panchayat was convened and a compromise stood entered on 26.1.2024 that the expenses of the treatment of

the injured sister would be borne by the opposite party no.2 faction. However, when the sister of the applicants was taken for medical treatment then the opposite party no.2 faction took a u-turn and they resiled from the assurance which they have given faction confronted with the same, the mother of the applicants preferred an application before the Circle Officer on 2.2.2024 complaining about the said act but no action was taken thereafter on 20.9.2024 proceedings under Section 156(3) Cr.P.C. was initiated against the opposite party no.2 and her brother namely Muzakkir, devar namely Aakil, son Shiva and daughter Fareen. Thereafter, a first information report under Sections 506, 504, 306, 326, 323, 354, 452, 149, 147 IPC stood registered being FIR No.0155 of 2024 on 13.3.2024 against the opposite party no.2 faction.

10. Learned counsel for the applicants further submits that even medical examination was conducted of the sister of the applicants and a charge sheet has been submitted against the accused in the said first information report, however, as a matter of counterblast on 27.2.2023 a complaint was lodged before the Chief Minister in IGRS portal and thereafter the present complaint has been lodged on 28.2.2024 relatable to the commission of the offences on 20.1.2024 pursuant where to the applicants have been implicated.

11. Submission is that the applicants have been falsely implicated as no such incident as alleged in complaint has ever occurred and the entire story is nothing but an attempt to somewhat pressurize the applicants to withdraw the criminal proceedings in this regard.

12. Sri Balvir Singh, learned counsel for the opposite party no.2 while countering the submissions so made by the learned counsel for the applicants has submitted that from the perusal of the allegations contained in the complaint vis-a-vis the statements under Section 200 and 202 of the Cr.P.C., it cannot be ruled out at no such incident occurred on 20.1.2024 as once the victim herself is coming up and deposing that bad act has been committed by the said applicants then merely because there is no recital of a bad act being committed in the complaint and statement under Section 200 of the Cr.P.C. and only attempt had been made to commit a bad act will not dilute or take away the rigorous of the statement so made by the victim. He further submits that the investigation cannot be throttled merely on the ground that the victim was not subjected to medical examination as the same would have its own effects when the trial commences. He also submits that there is no question of any retaliation or a counterblast as before lodging proceedings under Section 156(3) of the Cr.P.C., the opposite party no.2 along

with the daughter had already gone to the police for lodging of the first information report and getting the medical examination done but at the end of police no FIR was lodged then complaint was lodged before the Senior Superintendent of Police and thereafter the present complaint has been preferred.

13. Sri Moti Lal, learned A.G.A. for the State on the other hand has adopted the arguments so sought to be made by the opposite party no.2 and he submits that the summoning order cannot be faulted in any manner whatsoever.

14. I have heard the submissions so made across the bar and perused the material on record carefully.

15. In the present case, this Court is confronted with an order dated 27.2.2025 passed by the Additional Sessions Judge/Special Judge, POCSO Act, Budaun summoning the applicants under Sections 333, 64 B.N.S. read with Section 3/4 of the POCSO Act. There are certain parameters which have to be kept into consideration while testing the validity of a summoning order. Amongst others, one of the parameter is relatable to the fact that the case is prima facie triable or not on the basis of the allegations contained in the complaint and the statements under Sections 200 and 202 of the Cr.P.C.

16. Here in the present case, the Court finds that the complaint had been lodged on 28.2.2024 by the mother of the victim relatable to the commission of the offences on 20.1.2024 against the applicants wherein it was alleged that one of the accused applicants along with two to three unknown accused have entered into the house of the opposite party no.2 and Jaeem had put in the countrymade pistol upon the chest of the complainant and the other co-accused Jaid and Jamin had caught hold of the victim and they started molesting her while attempting to commit bad act and two accused was standing on the door. It is also alleged that when the daughter of the opposite party no.2 screamed then Mushrat son of Rahat Ali along with others came and at that point of time the daughter of the complainant/victim was in naked condition and on their arrival the accused ran away.

17. The statement of the complainant under Section 200 of the Cr.P.C. also narrates and incident dated 20.1.2024 at 5.00 in the evening wherein the applicants are being stated to have jumped from the outer wall and Jaeem had put in the gun on the chest of the complainant and the other co-accused Jaid and Jamin were molesting her daughter and the victim started crying and

screaming and after hearing the noise the neighbours came and thereafter the accused ran away.

18. As regards the statement under Section 202 of the Cr.P.C. of the victim she had narrated the incident while further adding that Jameen & Jaid accused had committed bad act and outraged her modesty.

19. So far as the contention of the learned counsel for the applicants that entire story of the prosecution stands eroded particularly when there is no allegation of commission of the bad act with the victim in the complaint as well as Section 200 of the Cr.P.C. is concerned, the same is not convincing particularly in view of the fact that once the victim herself had come up with a stand and deposed that bad act has been committed then it cannot be out-rightly ignored as it becomes a matter of trial. Even otherwise the issue of according weightage to the statements of the witnesses under Section 200 and 202 of the Cr.P.C. vis-a-vis the veracity of the complaint is a matter of trial as this Court at a summoning stage is not required to go into the said aspect of the matter particularly when there are pinpointed allegations sought to be levelled by the victim about committing of bad act.

20. As regards the submission so sought to be raised that the victim was not subjected to medical examination and in case medical examination would have been conducted that the entire truth would have surfaced and by not doing so the case of the prosecution falls down is concerned the same may be a matter of defence and its effect is not liable to be taken into consideration at this stage when the summoning order is being challenged as the same may be a consideration on his own strength when the trial commences while taking a decision as to whether it is a case of acquittal or conviction.

21. So far as the theory so sought to be propounded that the present complaint is nothing but a counterblast and retaliation is concerned, the same is at best a defence as at the stage of summoning the court is not required to address the said issue as the stage whereof has not arisen. Moreover it is apparent that the court of Additional Sessions/Special Judge, POCSO Act Budaun, while summoning the applicants under Section 333, 64 B.N.S. read with Section 3/4 of the POCSO Act had taken into consideration, the allegation in the complaint, the statements under Section 200 and 202 of the Cr.P.C. The Court at the stage of summoning is not required to conduct mini trial but it has to be prima facie satisfied and accord satisfaction that the case is triable and not frivolous.

Once it has come on record in the deposition of the victim that bad act has been committed with her then obviously the case is triable and it cannot be throttled on the ground that the complainant who happens to be the mother had only alleged that it was a case of attempt to rape. This Court at this stage is not required to record any finding in this regard as these are the subject matter of trials.

22. There is another facet which also needs to be noted that Section 29 of the Protection of Children from Sexual Offences Act, 2012 itself provides for 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 & 9 of the Act. The Special Court shall presume that such person has committed or abated or attempted to commit the offence, as the case may be, unless the contrary is proved. The word employed "unless the contrary is proved" itself clinches the issue as in a given case the issues are matter of trials.

23. Even otherwise at pre trial stage, no factual enquiry can be held as mandated in the case of ***M/s Neeharika, Infrastructure Pvt. Ltd. vs. State of Maharashtra and others reported in AIR 2021 SC 192*** and the 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."

24. On a pointed query, being made to learned counsel for the applicants, as to whether there was any jurisdictional error committed by the court below, the learned counsel for the applicants could not point out any jurisdictional error committed by the court below.

25. Resultantly, in absence of any jurisdictional infirmity or illegality pointed out by the learned counsel for the applicant/s, no good ground is made to quash the summoning order, as even otherwise, this Court finds that this is not a fit case wherein inherit jurisdiction power under Section 528 B.N.S.S. be invoked.

26. In view of above, the present application under Section 528 B.N.S.S. stands **dismissed**.

Order Date :- 5.5.2025

piyush