



2025:AHC:169528

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 26356 of 2025

Ekta Srivastava And 3 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Aditya Bhardwaj, Amit Daga
Counsel for Opposite Party(s) : Adarsh Tripathi, Avinash Tripathi,
Dharm Vir Singh, G.A.

Court No. - 92

HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

1. Heard Sri Amit Daga, learned counsel for the applicants; learned AGA for State; learned counsel for the opposite party no.2 and perused the material available records.

2. The instant Application U/S 528 BNSS filed by the applicants with the prayer to quash the charge sheet dated 11.01.2025 arising out of Case Crime No.147 of 2023, as well as entire proceedings of Criminal Case No.904 of 2025, (State versus Ekta Srivastava and others), under Sections 323, 325 and 506 IPC, Police Station Jasrathpur, District Etah, pending in the Court of Additional Civil Judge (Junior Division)/Judicial Magistrate, Court No.22, Etah including the order of cognizance and summoning dated 15.02.2025, by which learned court below summoned the accused applicant no.1 for the offence punishable under Sections 323, 325 and 506 IPC and the accused applicant nos.2, 3 and 4 for the offence punishable under Sections 506 IPC.

3. Learned counsel for the applicants submits that it is admitted fact that applicant no.1 is wife of opposite party no.2 and other applicants are family members of the applicant no.1. There was matrimonial discord between the applicant no.1 and opposite party no.2 which led to lodging of complaints and FIRs by the parties against each others. Applicant no.1 is daughter of applicant no.2 and niece of applicant no.3 and 4. The parties profess to Hindu religion. Opposite party 2 is Sub Inspector in the U.P. Police Department and he is misusing his official position and got a

false FIR lodged on 24.11.2023 on the basis of Application under Section 156(3) Cr.P.C. against the applicants under Sections 323, 325 and 506 IPC on the strength of false and manufacture injuries and X-ray report. The applicant no.2 is mother of applicant no.1 and she is Head Constable in the U.P. Police Department and presently posted at Police Line, Ghazipur. Applicant no.3 is mausa of applicant no.1, he is a business man as he is engaged in job of selling and repairing of Air Conditioners and Refrigerators. Applicant no.4 is the maternal uncle of applicant no.1 and he is Chartered Accountant. Applicant nos. 2 to 4 are not having any concern with the matrimonial dispute between the applicant no.1 and opposite party no.2 and they are falsely implicated in the present case by the opposite party no.2 being close relatives of applicant no.1. The marriage of applicant no.1 and opposite party no.2 was solemnized on 09.02.2019 as per Hindu Customs and Rituals and out of their wed-lock one daughter, namely, Km. Arya was born on -5.06.2020. After some time of marriage, the opposite party no.2 and his family members started harassing and torturing the applicant no.1 due to non payment of additional dowry. At the time of marriage opposite party no.2 was posted at Police Line, Prayagraj where he developed illicit relationship with a lady Constable, namely, Pushpa Devi. After some time of marriage, opposite party no.2 took applicant no.1 to the Government accommodation of lady Constable Pushpa Devi and forced her to live together with Pushpa Devi but she refused to live with said Puspa Devi, then opposite party no.2 had beaten her and thereafter opposite party no.2 took a separate accommodation on rent at Prayagraj where applicant no.1 started living with opposite party no.2 but he used to stay at the Government accommodation of lady Constable Pushpa Devi. Due to the illicit relationship between opposite party no.2 and Pushpa Devi, applicant no.1 filed a complaint before the SSP Prayagraj and on the said complaint an inquiry was conducted. Thereafter Pushpa Devi was transferred to Varanasi and opposite party no.2 was transferred at Etah but both of them did not break their illicit relationship. After transfer, the opposite party no.2 and applicant no.1 were living in the Government accommodation allotted to the former at Etah. On 01.10.2022 at about 09:00 PM an altercation took place between them due to illicit relations between opposite party no.2 and Pushpa Devi and applicant told that she

will make complaint to the higher authority about the illicit relationship, on which opposite party no.2 assaulted her by iron rod and she suffered several injuries. She raised alarm and made calls at 108, 112 and 181 numbers. On call, ambulance reached and it took her to Community Health Centre Aliganj (Etah) with assistance of two lady constables but due to serious condition she was referred to District Hospital, Etah where she was admitted for treatment and was also medically examined. In the medical examination 21 injuries were found on the person of the applicant no.1 but her FIR was not lodged due to the fact that the opposite party no.2 is police official. She was sent to one stop centre of District Hospital for medical treatment. Applicant no.2 who is mother of applicant no.1 sought casual leave for seven days for treatment of applicant no.1 with regard to said incident, applicant no.1 complained to the Police Authorities as well as District Administration, thereafter opposite party no.2 was attached with Police Line and an inquiry was conducted by the Senior Police Official on the complaint made by applicant no.1 and opposite party no.2 was suspended from service. Initially, opposite party no.2 had filed criminal complaint against applicant no.1 and others on 20.02.2023 but he failed to produce any witness under Section 202 Cr.P.C. and for want of evidence on 08.04.2024 it was dismissed under Section 203 Cr.P.C. Opposite party no.2 in a planned manner had filed application under Section 156(3) Cr.P.C. on 10.11.2023 during pendency of said complaint case and on the basis of an order passed by Magistrate thereon, present FIR was lodged on 24.11.2023 i.e. after more than one years of the alleged incident. This itself reflects that the prosecution version in the present case is concocted as had opposite party no.2 received any injury in the alleged incident, there was no reason why he failed to lodge an FIR as he was posted as SHO at said Police Station. The opposite party no.2 was suspended on 04.10.2022 on being found guilty in preliminary enquiry into complaint filed by the applicant no.1.

4. He further submits that the FIR of the applicant no.1 was lodged after much efforts under Sections 498-A, 323, 504, 506, 354, 313 IPC and 3/4 D.P. Act against the opposite party no.2 and four other accused persons who are his family members on 24.12.2023 at about 17.:26 hours. The authenticity of injury and x-ray report placed by opposite party no.2 is highly doubtful and these papers are prepared for evidence in favour of

opposite party no.2. The charge sheet has been filed against the opposite party no.2 in FIR lodged by applicant no.1 under Sections 498-A, 323, 504, 506 IPC and 3/4 D.P. Act.

5. It is also submitted that the present FIR is nothing but abuse of process of law and all the subsequent proceedings based on the said FIR are liable to be quashed in the interest of justice. The FIR of both sides relates to incident of same date, place and time of incident.

6. Per contra, learned counsel for the opposite party no.2 submits that at this stage there is nothing to raise any doubt on prosecution version as well as injury and x-ray reports. It is wrong to say that in inquiry conducted by police officials, there is no mention that opposite party no.2 had also suffered injuries in altercation with his wife. It is mentioned in the inquiry report of Neeraj Kumar Pandey, Additional Superintendent of Police (Crime) Etah dated 27.01.2023 that in the night on 01.10.2022 at 09:00 PM at the Government accommodation altercation took place between applicant no.1 (wife) and opposite party no.2 (husband). According the medical papers, the applicant no.1 suffered 21 injuries whereas opposite party no.2 also suffered 5 injuries in his hand. One injury was found grievous in x-ray report. His medico legal examination was done on letter of inquiry produced by police. Both the parties are presenting different versions. According to opposite party no.2 injury received by applicant no.1 is outcome of her frequent dashing on frame of window, whereas according to her version injury was caused by rod by the opposite party no.2. The applicant No.1 was sent to Primary Health Centre for her medical examination. The opposite party no.2 was suspended by order dated 04.10.2022. He next submitted that the FIR of applicant no.1 is highly belated and outcome of after thought. The opposite party no.2 conceded that the applicant no.1 had not stolen anything from his home and whatever she took away was her streedhan. He next submitted that a bare perusal of FIR version and supported by medical evidence makes out a prima-facie case under Sections 323, 325 and 506 IPC and the criminal proceedings are not liable to be quashed or set aside as prayed by the applicants. Opposite party no.2 has filed a suit for restitution of conjugal rights under Section 9 of the Hindu Marriage Act on 04.01.2203 which is pending before the Family Court. The

applicant No.1 assaulted the opposite party No.2 by stick due to which she suffered injuries. The witnesses have supported FIR version in their statement under Section 161 Cr.P.C.

7. On consideration of aforesaid submissions of learned counsel for the parties, with assistance of material available on record following significant facts emerged in the present case;-

- (i) The applicant No.1 and opposite party No.2 are husband and wife.
- (ii) The opposite party No.2 is Sub Inspector in Police Department and at the time of incident dated 01.10.2022 at 09:00 PM regarding which cross cases are filed by applicant No.1 and opposite party No.2 against each other, who are posted as Station Officer at P.S. Jasrathpur, District Etah and the spouse were residing in Government Quarter allotted to opposite party No.2. They were married on 09.02.2019 and out of their wedlock one daughter Km. Arya was born on 05.06.2020. Subsequent thereto some dispute had arisen between the spouse on account of alleged illicit relations of informant with one lady constable.
- (iii) Applicant No.2 is mother of applicant No.1, who was posted as Head Constable at P.S. Mahila Thana, Chandauli at the time of incident.
- (iv) Applicant No.3 is brother of the applicant No.1 and applicant No.4 is her relative. An altercation took place on 01.10.2022 between husband and wife at Government Quarter of opposite party No.2 in the campus of Police Station Jasrathpur, District Etah, in which applicant No.1 admittedly received injuries. She was brought to CHC, Aliganj Etah by Ambulance where her medico legal examination was conducted on next date on 02.10.2022 at 04:30 PM, and as per her medico legal examination she received 20 visible injuries in the form of Traumatic Swelling and contusion on different parts of her body including skull, neck, chest, abdomen and a complaint of pain on parts of body. These injuries were caused by physical assault, as per complaint version in hospital record. She was brought by Ambulance on 02.10.2022 at 08:25 PM, she was sent to one stop center of Government Hospital after her medico legal examination for treatment where she stayed up to 04.10.2022. On 05.10.2022 her mother Kavita Srivastava who is posted as Head Constable in District Chandauli visited her and took her to Varanasi. She

had earlier transferred Rs.14,50,000/- from her SBI Bank account to opposite party No.2 for purchasing a flat on his demand.

(v) Applicant No.1 had made a call on 108 for Ambulance service at 22:47 hours in the night of incident. She had also made call at 181, which is help and portal of Hon'ble the Chief Minister, the said incident was also published in various news papers and broadcast by various news channels. Under the order/direction of the authorities issue of the complaint of applicant No.1 was moved on IGRS portal. Sri Irfan Ahmad Sub Inspector Police, at P.S. Jasrathpur, Circle Officer Etah and Additional S.P. had conducted inquiry and observed that matter is pending before Pariwar Paramarsh Kendra.

(vi) The applicants had filed complaint before authorities that she was brutally assaulted by her husband Shravan Kumar Nigam in the night on 01.10.2022 by rod, due to which she was badly injured, she became bloodied due to assault. On complaint of applicant No.1 inquiry was conducted by Superintendent of Police, Etah, as the opposite party was a Police Officer, he was directed to report to line and on institution of inquiry. Circle Officer, Vikram Dwivedi had also reported to SSP, Etah on 01.01.2023 that after some time of marriage the opposite party (Shravan Kumar Nigam) used to harass the applicant physically and mentally and would threaten her by making demand of money. She has been victim of Domestic Violence Act committed against her, by her husband and his family members. He used to give beating to her and was having relation with some women. In the night of 01.10.2022 at around 09:00 PM opposite party brutally assaulted her by a iron rod at his official quarter. She was brought to CHC, Aliganj in serious condition after the incident, in bloodied condition by Ambulance.

(vii) Additional Superintendent of Police, submitted inquiry report to S.S.P. Etah on 06.01.2023, in which he has placed reliance on report of Circle Officer that the complainant was left at at her parental place by opposite party for 331 days in total after subjecting her to domestic violence, torture and demand of money.the version of the opposite party No.2 was found baseless and false.

(viii) it is also stated in Enquiry report that the complainant was assaulted

by her husband at 09:00 PM on 01.10.2022 by iron rod brutally, in which she received serious injuries and she was taken to CHC Aliganj, Etah from where she was referred to District Hospital, Etah. She was treated and was sent to one stop center. The opposite party was placed under suspension by SSP, Etah on 04.10.2022 due to this incident, the opposite Shrawan Kumar Nigam had also got medically examined on 01.10.2022 at 11:45 PM at CHC, Aliganj and in his medico legal examination only two visible injuries and three complaint of pain are shown. All injuries except injury No.5 which is Traumatic swelling 3 cm x 2 cm on lower part of left forearm of back side, were found simple, injury No.5 was referred for X-ray report. In X-ray report dated 06.10.2022 of left forearm AP, undisplaced hairline fracture of capitate bone of left wrist joint was seen which is "grievous". The injuries were caused by hard and blunt object. The other injury is abrasion 1 cm x 0.5 cm out of middle finger of left hand palm surface.

(ix) Opposite party No.2 filed a criminal complaint before the court of CJM, Etah, which is registered as Complaint Case No.4184 of 2023 (Shrawan Kumar Nigam Vs. Ekta Srivastava (present applicant) and others on 20.02.2023 under Sections 379, 380, 323, 325, 504, 506 IPC, Police Station Jasrathpur with allegation that in the night of 01.10.2022 his wife engaged in altercation with him by making allegations against him by making allegations against him that he was having relationship with other women. She assaulted him by a stick, due to which he suffered injuries and later on fracture was found in his hand, in X-ray report she also suffered some injuries accidentally, thereafter on 05.10.2022 the applicant, his wife and other accused visited his resident in his absence and took away Rs.70,000/- in cash and ornaments, which was seen by neighbours.

(x) During pendency of aforesaid criminal complaint, the opposite party filed an application under Section 156(3) Cr.P.C. before the Court of Civil Judge (JD)/ Judicial Magistrate, Court No.22, Etah with similar allegations against present applicants and on the basis of order passed by the court an FIR was lodged against the applicants vide Case Crime No. 147 of 2023 under Sections 323, 379, 325, and 506 IPC, on 24.11.2023. The police during investigation charge of theft was not substantiated and

chargesheet was filed against the present applicants under Sections 323, 325 and 506 IPC which has been assailed through present application under Section 528 BNSS.

(xi) Doctor Sarvesh Kumar in his statement under Section 161 Cr.P.C. stated that injury No.5 of informant Shravan Kumar Nigam was grievous in nature.

(xii) After lodging of FIR through application under Section 156(3) Cr.P.C. the complaint filed by the opposite party was dismissed under Section 203 Cr.P.C. by CJM, Etah on 08.04.2024 on the ground that he failed to examine the witness at the state of Section 200/202 Cr.P.C..

(xiii) The applicants had assailed the FIR lodged against them by filing an application under Section 482 Cr.P.C., in which protection from arrest was granted to the applicants during investigation of the case.

(xiv) Medico legal examination of the applicants was conducted on injury letter issued from police station, but no fitness certificate was filed by him after treatment.

(xv) During investigation both sides have tried to explain the injuries of other. The opposite party has stated that applicant No.1 received injuries in the night of the incident by colliding with the gate and falling on frame of the window which were placed on the gate. According to applicants side, it was stated that he would have received injuries in the process of resistance offered by the applicant to the assault caused by him, such statements were made during departmental inquiry.

(xvi) The applicant No.1 could only get the FIR lodged on 24.12.2023 vide Case Crime No.569 of 2023, under Sections 498, 323, 504, 506, 354, 313 IPC and Section 34 of Dowry Prohibition Act, which includes the events occurring prior to and after the alleged incident dated 01.10.2022. This FIR was lodged on application moved by her before Commissioner of Police Commissionerate, Varanasi bearing date 20.12.2023, in which she has stated that even after conducting inquiry into the incident by Investigating Officers of Police, no direction was issued for lodging the FIR into the complaint of the applicant.

(xvii) NBW has been issued against the opposite party in Criminal Case instituted at the instance of the applicant No.1, due to his non-appearance.

8. Learned counsel for the applicants placed reliance on a judgment of Hon'ble Supreme Court in **State of Haryana Vs. Bhajan Lal reported in 1992 Supp (1) SCC 335 :-**

" 102. In the backdrop of the interpretation of the various relevant provisions of the code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1)Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2)Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3)Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4)Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

(5)Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6)Where there is an express legal bar engrafted in any of the provisions of the code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7)Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge".

9. This is an unfortunate case in which the applicant No.1 who is legally wedded wife of opposite party No.2 had served as many as 20 visible and one complaint of pain over the body in the fateful night on 01.10.2022, when she was staying with her husband in Government Quarter situated at campus of Police Station Jasrathpur, District Etah. The opposite party No.2, first informant was posted as Station Officer said police station. Applicant No.1 was rushed to community health center by Ambulance with assistance of two lady constables, just after the incident in which she was allegedly brutally assaulted by her husband by iron rod. Although her injuries were not found to be grievous in nature, but in the statement of witnesses who were examined by Senior Police Officials in connection with complaint of incident lodged before him by applicant No.2, this fact gets fortified that it was opposite party No.2 who had brutally assaulted his wife by iron rod, she was rushed to CHC for treatment in the condition when she was in pool of blood. This is strange that despite the fact that the Senior Officials of Police Department found the allegation made against the opposite party No.2 regarding domestic violence and brutal assault committed by him to his wife, no FIR was lodged against him on her complaint made to Senior Officials after the incident and FIR can only be lodged on 24.12.2023 after lapse of more than a year. When she moved an application before the Commissioner of Police, Varanasi the version of the opposite party that altercation took place between husband and wife at

his official resident, as she was making allegations that he was having illicit relationship with other woman and assaulted him by bringing a knife from a kitchen, and in the process he received injuries in his hand, and the applicant No.1 also received injuries in defence and she fell on widow frame and latish kept near the door, no such things like window frame or lattice was found nor any knife was found there.

10. It is also strange that no letter MLC (Chitthi Majroobi) was sent by police station for medico legal examination of the victim, just after the incident. Whereas the opposite party No.2 got his medical examination done in the fateful night, as police case by MLC letter issued from police station. This is a clear case of highhandedness, cruelty, misuse of official position by opposite party No.2. There are ample material on record that he was in relationship with some lady constable, which was bone of contention between the spouse. This is also unbecoming of a government servant and amounts to misconduct.

11. The opposite party No.2 initially filed a criminal complaint with regard to the same incident, time 09:00 pm against the applicants on 20.02.2023 with similar allegations as made in the present FIR and during the pendency of this complaint at the stage of evidence under Section 200/202 Cr.P.C., he filed an application under Section 156(3) Cr.P.C. before the court on 10.11.2023 for lodging an FIR and registration of the case on identical facts which was allowed by the court and on the basis of order passed thereon present FIR was lodged.

12. He appears to have concealed the fact of pendency of his criminal complaint in regard to same incident in application under Section 156(3) Cr.P.C. for reasons best known to him. This fact emerged during investigation that the applicant No.2, the mother of the applicant No.1, who was posted as Head Constable in District Chandauli had taken seven days leave on getting information of this incident and visited Etah on 05.10.2022 and took the applicant No.1 with him to Varanasi. The allegations of theft made by the applicant in present FIR were not substantiated and even opposite party No.2 admitted in his statement before the Investigating Officer that his wife and family members had taken a way only streedhan and not his belongings from his residence.

13. Thus, there appears to be a case of blatant false allegations with regard to charge of theft against the applicants. There is no specific allegation that out of five accused persons in the present case who had hurled threat to opposite party No.2 that they will implicate him in false case. The applicant No.1 has been chargesheeted for charge under Sections 323, 325, 506 IPC, and other applicants are chargesheet under Section 506 IPC. Applicants No.3 and 4 are relatives of applicant No.1 and residents of Varanasi.

14. The opposite party No.2 was reported to lines just after this incident and subsequently he faced department inquiry after being placed under suspension. His injury report reveals two visible injuries, one traumatic swelling on his wrist joint and other an abrasion on tip of his finger. The two injuries are superficial and insignificant. The one injury, the traumatic swelling on his left lower forearm appears to be significant which was found grievous in X-ray examination, but if we go through the totality of the facts and circumstances of the case, the position and status of opposite party vis-a-vis the applicant No.1 who was alone with him at his official quarter and the manner and mode of causing of injury, public outrage after the incident and the enormity of injuries, out of which as many as 9 injuries were found in medical legal examination report on vital parts, speak volume about the brutality caused to the applicant No.1 while assaulting her and inflicting these injuries. In this backdrop, the version of opposite party No.2 in present case, that he was assaulted with stick by applicant No.1 due to which he suffered the injuries mentioned above appears to be unfounded and devoid of any force. The circumstances indicate otherwise, as it appears that he might have received the injury in the process due to resistance offered by the applicant No.1 to avoid assault allegedly given by the opposite party No.2. The opposite party No.2 could not offer any plausible explanation of the 210 injuries inflicted to the applicant No.1 in the same incident, whereas admittedly the spouse were present on the date time and place of the incident.

15. This Court is not oblivious of the fact that on the basis of FIR version, injury and X-ray report of opposite party No.2 a cognizable offence is made out against the applicants, but in a petition under Section 528 BNSS where inherent powers of the court are invoked to quash the

vexatious legal proceeding against the applicant who themselves appear to be falsely implicated in the case and applicant No.1 herself appears to be victim of severe domestic violence allegedly committed by her husband, the background facts cannot be lost sight and ignored.

16. This case in my considered opinion comes within the purview of Clause -7 of dictum of Hon'ble Apex Court in **State of Haryana Vs. Bhajan Lal** (supra), wherein it is provided that where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. The extraordinary power of the High Court under Article 226 or the inherent powers under Section 482 Cr.P.C. of the court may be invoked to prevent abuse of the process of any court or otherwise to secure the ends of justice.

17. In view of the above, and for reasons shown above, the continuance of proceeding of aforesaid criminal case before the trial court is an abuse of process of law and the proceedings are liable to be quashed in the interest of justice.

18. Therefore, on peculiar facts of this case the application under Section 482 Cr.P.C. is allowed with above observations. The proceedings of aforesaid Criminal Case No.904 of 2025, (State versus Ekta Srivastava and others), under Sections 323, 325 and 506 IPC, pending in the Court of Additional Civil Judge (Junior Division)/Judicial Magistrate, Court No.22, Etah, arising out of Case Crime No.147 of 2023, Police Station Jasrathpur, District Etah are hereby quashed.

19. Nothing observed herein above shall have bearing in any other legal proceedings between the parties.

(Ram Manohar Narayan Mishra,J.)

September 8, 2025

I.A. Siddiqui /Ashish/-