

Court No. - 75

Case :- APPLICATION U/S 528 BNSS No. - 41069 of 2024

Applicant :- Nasruddin And Another

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

Counsel for Applicant :- Yakub Ali

Counsel for Opposite Party :- G.A., Pawan Kumar

Hon'ble Vikas Budhwar, J.

1. Heard Sri Yakub Ali, learned counsel for the applicants and Sri S.P. Singh, learned State Law Officer for the State.

2. This is an application filed U/s 528 BNSS for quashing the order dated 16.08.2024 passed by Special Judge, Ananya Court (POCSO Act) Maharajganj on Misc. Application No. 283 of 2023 (Madhuri vs. Nasruddin and Ors) U/s 354, 504, 506 IPC and Section 7/8 of POCSO Act.

3. The case of the applicants is that the opposite party no.2 initiated a proceeding U/s 156 (3) Cr.P.C. against the applicants U/s 323, 354B, 376/ 511, 504, 506 IPC read with Section 7/8 POCSO Act with an allegations that the complainant/ opposite party no.2. is the resident of District Maharajganj and on 30.10.2022 at 11:00 in the night when the opposite party no.2 was alone in the house along with her children then the applicant herein had barged into the house of opposite party no.2 while knocking the door and on hearing the knocking of the door, the opposite party no.2 and her minor child/ victim who is 13 years old awake and the victim rushed towards the door to open it and found that the applicants were standing and on seeing the victim, the applicants gave a blow and attempted to commit offence while extending indecent behaviour in gesture while pressing the breast of the victim and they tore the cloths which the victim was wearing and through the victim on the floor and attempted to outrage the modesty and when the daughter of opposite party no.2/ victim made hue and cry then the opposite party no.2 ran to rescue the victim then the applicants herein took the knife, threatened and also hurled abuses while uttering that if the said incident is reported to anybody then they will be done to death. As per the complaint on account of hue and cry being raised, the villagers/ neighbours who were living therein came there and the incident was reported to the police but when the first information report was not being lodged then the complaint was lodged on 15.11.2022. Post filing of lodging of the complaint, statement of

opposite party no.2- mother of the victim namely Madhuri Sharma U/s 200 Cr.P.C. followed by the statement of Manju Sharma, Priyanka Sharma and the victim Anjali Sharma U/s 202 Cr.P.C. was recorded and on 09.11.2023 an order came to be passed by the Special Judge (POCSO Court), Maharajganj by rejecting the complaint U/s 203 Cr.P.C. Questioning the said order, the opposite party no.2 preferred an application U/s 482 Cr.P.C. No. 3955 of 2024 (Madhuri vs. State of U.P.) in which on 05.07.2024 the following order was passed:

"1. Heard Sri Pawan Kumar, learned counsel for applicant and perused the record.

2. Applicant before this Court is complainant, who has filed an application under Section 156(3) Cr.P.C. which was considered as a complaint case.

3. Learned counsel for applicant submits that statement of Complainant and witnesses including victim were recorded, however, Trial Court concerned vide order dated 09.11.2023 has rejected complaint by an order passed under Section 203 Cr.P.C. He refers relevant part of order as under:

"6. दाण्डिक परिवाद पत्र की पत्रावली पर मौजूद तथ्य, कथन तथा साक्ष्य के परिशीलन से यह स्पष्ट हो रहा है कि मामले में वादी मुकदमा ने धारा 156 (3) दण्ड प्रक्रिया संहिता के तहत प्रार्थना पत्र प्रस्तुत करते हुए कथन उल्लिखित किया था कि 30.10.2022 को 11 बजे रात के वक्त आरोपी द्वारा जबरदस्ती खींचकर बुरी नियत से लज्जा भंग करते हुए स्तन दबाना तथा पटक कर बलात्कार का प्रयास करने की बात कही। इस सम्बन्ध में तथ्य वर्णित करते हुए प्रार्थना पत्र प्रस्तुत किया जिसको 22.12.2022 के आदेश द्वारा परिवाद के रूप में पंजीकृत किया गया।

7. दौरान जांच वादिनी सहित अन्य साक्षीगण व पीड़िता. का बयान मामले में दर्ज किया गया। समग्र साक्षीगण के साक्ष्य के अवलोकन से स्पष्ट हो रहा है कि घटनास्थल विनिर्दिष्ट रूप से घर कहा गया है लेकिन वह पीड़िता का घर है या आरोपी का घर है इस तरह का कोई उल्लेख नहीं है। अपराध की प्रकृति घटनास्थल के सम्बन्ध में साक्षीगण के बयानों में विरोधाभास है। मामले में वादिनी ने जो साक्ष्य दिया उससे 12 वर्ष उम्र बतायी है जबकि प्रार्थना पत्र में 13 वर्ष उम्र कही है। अपराध की प्रकृति घटनास्थल के सम्बन्ध में अत्यधिक विरोधाभास है। थाना आख्या पत्रावली पर मौजूद है जिसमें यह उल्लेख हुआ है कि "प्रार्थना पत्र उपरोक्त के सम्बन्ध में जांच एवं थाना अभिलेखों के अवलोकन यह पाया गया कि पुरानी रंजिश के कारण मार पीट किया गया था। जिसमें आवेदिका के पुत्र विशाल शर्मा पुत्र राम अचल व बृजेश पुत्र राम अचल, अंजनी पुत्री राम अचल पता उपरोक्त के विरुद्ध मु० अ 0 सं०-275/2022 धारा-323,504,506 भा०दं०सं० पंजीकृत है। मेडिकल के आधार पर धारा-325,308 भा०दं०सं० की बढ़ोत्तरी की विवेचना प्रचलित है। इसी प्रतिशोध वश मुकदमे में सुबह हेतु दबाव बनाने के लिए माननीय न्यायालय को प्रार्थना पत्र दिया गया है। इस सम्बन्ध में कोई अभियोग पंजीकृत नहीं हैं।"

4. Referring above referred part of impugned order, learned counsel submits that essentially the reason to reject complaint was that statements of Complainant and witnesses do not identify the place of occurrence as well as there was a minor difference with regard to age of victim in the statements. Trial Court has also taken note that there was a prior enmity between parties.

5. Learned counsel further refers statements of Complainant and victim that they have categorically stated that on the date of occurrence they were

sleeping in their house, therefore, there is no contradiction on the issue of place of occurrence. He further submits that so far as age of victim is concerned, a minor difference in age being 12 or 13 years does not have any adverse bearing since the Trial Court has to be considered only that whether victim was minor or not.

6. I have carefully perused statements of Complainant and witnesses, which are reproduced hereinafter:

Statement of Complainant under Section 200 Cr.P.C.

"साक्षी नाम माधुरी पत्नी श्री राम चल उम्र 40 साल साकिन ग्राम जंगल बडहरा टोला हर तोड़वा, थाना पनिररा जिला महाराजगंज ने सशपथ बयान किया की घटना हुए दो तीन माह हुआ। समय 11:00 बजे रात का था मैं अपने बच्चों के साथ अपने घर में सो यी हुई थी, उसी समय तभी नसरुद्दीन और देवेंद्र मेरे घर का दरवाजा खटखटान लगे। तब मेरी पुत्री अंजनी उम्र 12 वर्ष दरवाजा खोली तभी विपक्षीगण ने उसकी पुत्री अंजनी का हाथ पडकर जबरदस्ती घर में खींच लिये और उसका सलवार फाड़ दिए और उसके साथ अश्लील हरकत कर रहे थे। मेरी पुत्री शोर पर जब तक हम लोग पहुंचते तब तक विपक्षीकरण गाली गुप्ता व धमकी देते हुए भाग गए। शोर पर अगल-बगल का कोई नहीं आया। थाने पर घटना की सूचना दिया था परंतु कोई कार्रवाई नहीं हुयी। तब पुलिस अधीक्षक महाराजगंज को घटना की सूचना जरिये रजिस्ट्री प्रेषित किया था, परंतु कोई कार्यवाही नहीं हुयी। तब न्यायालय में प्रार्थना पत्र दिया था।"

Statement of PW-1 under Section 202 Cr.P.C.

"साक्षी मंजू शर्मा उम्र 42 वर्ष पत्नी राम आशीष शर्मा साकिन ग्राम जंगल बडहरा तोतला हर तुड़वा थाना पनिररा जिला महाराजगंज में शपथ बयान किया कि माधुरी मेरी रिश्ते में देवरानी लगती है घटना हुई करीब दो ढाई महीना हो गया रात के 11:00 रहे थे नसरुद्दीन व देवेंद्र माधुरी के घर आए थे दरवाजा खटखटा दरवाजा माधुरी की लड़की अंजनी ने खोला अंजनी की उम्र 12 13 वर्ष है उक्त दोनों ने अंजनी को पडकर जमीन पर पटक दिए अंजनी का कपड़ा वगैरह फाड़ दिए और बलात्कार करने का प्रयास किए स्तन वगैरा भी पड़े थे तब अंजनी के शोर पर मैं प्रियंका और उसकी मां माधुरी जोखू भी आ गए और घटना को देखे वह बीच बचाव किया उक्त दोनों मूल्मानगढ़ चाकू दिखाते हुए कहे कि इस घटना को कहीं शिकायत करोगी तो तुम्हें वह तुम्हारे परिवार को जान से मार देंगे"

Statement of PW-2 under Section 202 Cr.P.C.

"साक्षी का नाम जोखू शर्मा पुत्र फूलचंद शर्मा उम्र 50 वर्ष पैसा खेती साकिन ग्राम जंगल बडहरा तोतला हर तुड़वा थाना पनिररा जिला महाराजगंज में शपथ बयान किया कि माधुरी मेरे भाई की औरत है घटना दिनांक 30 10 22 समय 11:00 बजे रात की है मेरे गांव के नसरुद्दीन व देवेंद्र माधुरी के घर आए तथा दरवाजा खट्टा है दरवाजा माधुरी की लड़की अंजलि ने खोला जो अभी नाबालिक है जिसकी उम्र 12-13 वर्ष है उक्त मुलाजमान अंजनी के दरवाजा खोलते ही उसे पकड़ लिए तथा पडकर जमीन पर पटक दिए तथा उसके शरीर पर कपड़ा वगैरह फाड़ दिए और बलात्कार का प्रयास करने लगे स्तन को भी पड़े थे हम लोग भी तब अंजनी के शोर पर मेरे अलावा अंजनी की मां माधुरी वह मंजू शर्मा और मेरी लड़की प्रियंका तथा गांव के अन्य तमाम लोग आ गए जो घटना को देख वी बीच बचाव किया उक्त मुसलमान चाकू दिखाते हुए भाग गए और कहे कि इस घटना की कहानी शिकायत करोगे तो तुम्हें तुम्हारे परिवार को जान से मार देंगे मैंने जो देखा सुना वही बयान दे रहा हूं"

Statement of PW-3 under Section 202 Cr.P.C.

"साक्षी का नाम प्रियंका शर्मा पुत्री जोखू शर्मा उम्र 19 वर्ष पेशा विद्यार्थी साकिन ग्राम जंगल बडहरा तोतला हर तुड़वा थाना पनिररा जिला महाराजगंज ने शपथ पूर्वक बयान किया कि

माधुरी मेरी चाची है घटना दिनांक 30 10 22 समय 11:00 बजे रात की है मेरी चाची अपनों घर पर बच्चों के साथ हई थी उसी रात में मेरे महाराजगंज ने शपथ गांव के नसरुद्दीन व देवेन्द्र मेरी चाची के घर आए तथा दरवाजा खटखटाना लगे दरवाजा मेरी चाची की लडकी अंजलि ने खोला अंजनी की उम्र लगभग 13 साल है जब अंजनी ने दरवाजा खोला तो उक्त मुलजिमान अंजनी को पकड़ लिए तथा पडकर जमीन पर पटक दिए तथा उसके शरीर पर कपड़ा वगैरह फाड़ दिए बलात्कार का प्रयास भी किया स्तन भी पड़े थे तभी अंजनी को के शोर पर मेरी चाची वह मैं मंजू शर्मा और मेरे पिताजी शर्मा आ गए जो घटना को देख बीच बचाव किया मुलजिमान जाते-जाते चाकू दिखाते हुए धमकी दिए कि इस घटना की शिकायत कहीं करोगी तो तुमको वह तुम्हारे परिवार को जान से मार देंगे मैंने जो देखा सुना वही बयान दे रही"

Statement of PW-4 under Section 202 Cr.P.C.

"साक्षी का नाम अंजनी शर्मा पुत्री राम अचल शर्मा उम्र 14 वर्ष पेशा विद्यार्थी साकिन ग्राम जंगल बडहरा तोतला हर तुडवा थाना पनियरा जिला महाराजगंज में शपथ पूर्वक बयान किया की घटना दिनांक 30 10 22 समय 11:00 बजे रात की है हम हमारी मम्मी सोए थे दरवाजा बंद था नसरुद्दीन व देवेन्द्र दरवाजा खटखटा आवाज सुनकर मैं उठी और दरवाजे पर जाकर दरवाजा खोली जैसे ही दरवाजा खुला नसरुद्दीन व देवेन्द्र हमको घर के अंदर उठाकर पटक दिए मेरा कपड़ा जो पहनी थी फाड़ दिए मैं नग्न अवस्था में हो गई दोनों नसरुद्दीन व देवेन्द्र मेरा स्तन पकड़ लिए उसके बाद बलात्कार का प्रयास किया जब दोनों ने चाकू दिखाया तब मैं शोर किया तब मेरी दीदी, मेरे बड़े पापा, मेरी बड़ी मम्मी मेरी मम्मी शोर सुनकर आए तब दोनों हमें छुड़ाकर भाग गए और जाते समय धमकी दिए कि कहीं बताओगी तो तुम लोगों को जान से मार देंगे"

7. In aforesaid circumstances, Court is of the view that there is no ambiguity with regard to place of occurrence as well as minor difference in age of victim mentioned in statements has no much adverse bearing. The statement of victim discloses that offence as alleged was committed. Only on ground of prior enmity all statements cannot be considered to be false. Therefore, the order impugned in this application does not survive in eyes of law.

8. Though in normal circumstances, notice is to be issued to Opposite Parties No. 2 and 3, i.e., accused, however considering that impugned order is perverse since it is contrary to record, therefore, in the interest of justice, inherent power under Section 482 Cr.P.C. is invoked.

9. In the result, application is allowed. Impugned order dated 09.11.2023 passed by special Judge, Maharajganj in Complaint No. 77 of 2022 (Madhuri vs. Nasaruddin and another), is hereby set aside. Matter is remitted back to Court concerned to pass a fresh order in accordance with law.

10. Registrar (Compliance) to take steps. "

4. Post remand now the applicants have been summoned by the court of Special Judge (Ananya court), POCSO Act, Maharajganj on 16.08.2024 U/s 354, 504, 506 IPC and Section 7/8 of POCSO Act. Questioning the summoning order, the present applicant has been preferred.

5. Learned counsel for the applicants has submitted that no offence whatsoever has been committed by the applicants and the

complaint so sought to be lodged by the opposite party no.2. is nothing but a bundle of lies, having no nexus with reality. Submissions is that there are material contradiction in the statements U/s 200 & 202 Cr.P.C. vis-a-vis the complaint. It is contended that in the proceeding U/s 156 Cr.P.C. it has been recited that on the hue and cry raised, the villagers who were in the vicinity came. However, in the statement U/s 200 Cr.P.C. a specific deposition has been made by the complainant that none of the villagers/ neighbours came when hue and cry was being raised. Argument is that the said contradiction and variation in the statement U/s 200 Cr.P.C. vis-a-vis the complaint totally erodes being prosecution theory and depicts falsity in the allegations. Further submission is that though the allegations pertain to attempting to outrage the modesty and pressing the breast of the victim was not put to medical examination and had the medical examination of the victim would have been made then the truth have surfaced. He submits that thus adverse inference is to be drawn. Further submission is that even in the complaint the age of the victim has been shown to be 13 years whereas in the statement U/s 200 Cr.P.C., the age has been shown to be 12 years, thus, even in absence of anything conclusive and determinable the POCSO Act could not have been attracted. Further submission is that the impugned complaint is nothing but grossest misuse of process of law being counter blast and retaliation particularly when the mother of the applicant no.1 being Hasirun Nisha had lodged a first information report being no. 0275 of 2022 on 02.11.2022 U/s 323, 504, 506 IPC against Vishal, Brijesh Sharma and Anjani wherein they happens to be the son of opposite party no.2. Contention is that even the injury was sustained by Nasruddin applicant no.1 and that is why the provisions of Section 308 IPC stood included and a charge-sheet came to be submitted U/s 323, 504, 506, 325, 308 IPC. The contention is that just in order to dictate terms and to exert force, the applicants should enter into compromise and false and incorrect story has been cooked up in that regard that to by way of in the present complaint. It is also contended that the summoning order dated 09.11.2023 suffers from total non application of mind as the same probably has been passed on mere asking without recording any satisfaction regarding application of the penal provision. Learned counsel for the applicant has also submitted that there are no independent witnesses and the witnesses who are deposed are relative and not independent.

6. Countering the submissions so made by the counsel for the applicant, Sri S.P. Singh, learned State Law Officer submits that

whatever might be from the perusal of the allegations so sought to be made in the complaint vis-a-vis the statement U/s 200 & 202 Cr.P.C., the occurrence of the event and commission of the offences cannot be rightly ruled out. As a matter of fact the victim as well as the statement of the victim U/s 202 Cr.P.C and of the other independent witnesses U/s 202 and 200 Cr.P.C. are intact. He submits that merely because the victim has not been subjected to medical examination would not render the proceedings illegal.

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

8. In the present case at hand, at the instance of the applicant challenge has been raised to a summoning order whereby the applicants have been summoned U/s 354, 504, 506 IPC read with Section 7/8 POCSO Act. There are certain parameters according to which the summoning order to be tested. Amongst others one of the same inevitably would be the nature of the allegations in the complaint, vis-a-vis in the statement U/s 200 & 202 Cr.P.C. In case there are material contradictions and variation then the position becomes different and further in case, there are no material contradiction then the court would be reluctant in interfering. Applying the said principles in the facts of the case, it is apparent that the complaint stood lodged by the opposite party no.2 against the applicants with an allegation that on 30.10.2022 at 11:00 in the night the applicants barged into the house, knock the door and when the victim open the door then she was subjected to outraging her modesty and her breast was also pressed. The said statement remains intact not only in the deposition of the victim U/s 202 Cr.P.C. but of the other and the complainant U/s 200 Cr.P.C. The contention of the counsel for the applicant that there happens to be a contradiction in the statement U/s 200 Cr.P.C. vis-a-vis the allegations made in the complaint that on hearing on hue and cry, the villagers/ neighbours came but in the statement U/s 200 Cr.P.C. a specific deposition has been made that none of the neighbours or the villagers came there. In the opinion of the Court, the said contradiction cannot be said to be a material contradiction so as to demolish the prosecution theory at a stage where a summoning order is subject matter of challenge

9. In the present case once the statement of the witnesses U/s 200 & 202 Cr.P.C. are in confirmity in the consonance with the allegations in the complaint then obviously the case become triable. As regards non subsection of the victim to medical examination, the same is not a criteria to be adopted to test the summoning order particularly when the same would have its own

effect and remification when the trial commences when a decision is to be taken, whether the accused is to be acquitted or convicted. With respect to the submissions of the counsel for the applicants that already a first information report stood lodged by the mother of the applicant regarding injuries sustained by the applicant, the son of opposite party no.2 and the same became a motivating factor for lodging of the complaint just as a counter blast or retaliation is concerned, the same may have its own effect and on its strength and velocity when the trial commences. At best it is a defence consideration whereof is not required to be gone into at this stage. In so far as the age of the applicant is concerned whether it is 12 or 13, a conclusive finding is to be recorded at the time of the trial when evidences are led. This Court at the stage is not required to delve into the same. Even otherwise in the case of ***M/S Neeharika, Infrastructure Pvt. Ltd. vs. State Of Maharashtra and others reported in AIR 2021 SC 192*** in paragraph no. 23 culled out the following propositions of law for exercise of jurisdiction U/s 482 Cr.P.C./ section 528 BNSS 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."

10. Cumulatively analysing the case in the four corners of law this Court finds that the present case does fall within the exceptional category for any interference.

11. Accordingly, the interference is declined.

12. The applications stands disposed of leaving it open to the applicants to take all legal and factual grounds while contesting the trial and the court has no reasons to disbelieve that the same shall be decided strictly in accordance with law.

Order Date :- 17.7.2025

C. MANI

(Vikas Budhwar,J.)