

Court No. - 73

Case :- APPLICATION U/S 528 BNSS No. - 43273 of 2024

Applicant :- Gourav Trivedi

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

Counsel for Applicant :- Ashok Trivedi, Rahul Trivedi, Shivani Trivedi

Counsel for Opposite Party :- Fakhruzzaman, G.A.

Hon'ble Vikas Budhwar, J.

1. Heard Sri Ashok Trivedi, learned counsel for the applicant, Sri S.K. Singh learned AGA for the State and Sri Fakhr ur Zaman for the opposite party No.4.

2. This application under Section 528 of the BNSS has been filed by the applicant to quash the entire proceedings of Criminal Case No.82 of 2023 (Rama Srivas Vs. Gourav Trivedi & others), under Sections 354-A/354B/504 IPC & Section 7/8 of POCSO Act, Police Station Kotwali, District Jhansi, pending in the court of Special Judge POCSO Act, Jhansi including the summoning order dated 1.10.2024 summoning the applicant under Sections 354-A/354-B/504 IPC & Section 7/8 POCSO Act, 2012 as well as the order dated 7.8.2023 treating the proceedings under Section 156(3) of the Cr.P.C. as a complaint case.

3. The facts of the case are that a complaint was lodged by the opposite party No.4 on 24.5.2023 before the Court of Special Judge (POCSO Act) Jhansi, under Sections 147, 323, 452, 354, 354B, 504, 506, IPC read with Section 7/8 POCSO Act further read with 3 (1) 10 SC/ST Act with an allegation that the complainant is the resident of District Jhansi and his son Akash Srivas is a Poll Agent of one of the independent candidate since 4.5.2023. Against the said independent candidate one other candidate proceeded to contest the election and when the elections on the said date were over and opposite party no.2 son came back to the house and proceeded for a marriage and on the said date i.e. 4.5.2023 at 10 in the night, the applicant herein along with his father Rajendra Trivedi, Pramila Panda, Birju and Bhanu Gupta acted as a gang and barged into the house of the opposite party No.4 and kicked the main door and also used a cudgel while banging the door then the opposite party No.4 complainant, her

daughter-in-law and the victim, who is 15 years of age, approached the main door and as soon as the victim opened the door, the accused including the applicant herein forcefully entered into the house and the applicant herein touched the chest of the victim and tore her clothes and all the accused so present therein proceeded to exhibit indecent behaviour while making obscene gestures while touching the private parts and hurled abuses in Hindi vernacular saying that Raja Nivas, who is the relative of the opposite party No.4 had not casted the vote in favour of the applicant faction. Hue and cry was raised then the daughters of the opposite party No. 4 Manu Rajak and Ayushi Srinivas came and on witnessing them the accused ran away hurling abuses in Hindi vernacular and caste based.

4. A complaint was lodged in the public redressal portal, a written complaint was sent by a registered post to the S.S.P. and since nothing was done, the complaint under Section 156 of the Cr.P.C. was filed. Post recording of the statement of the complainant, Anita Srinivas under Section 202 of the Cr.P.C. and the victim under Section 202 of the Cr.P.C., the applicant herein has been summoned under Sections 354Ka, 354 Kha, 504 IPC read with Section 7/8 of the POCSO Act in Complaint Case No. 82 of 2023 on 1.10.2024.

5. Questioning the summoning order as well as the order treating the application under section 156(3) of the Cr.P.C. as a complaint case vide order dated 7.8.2023, the present application has been filed.

6. Learned counsel for the applicant has submitted that the summoning order cannot be sustained for a single moment. Elaborating the said submission, it is submitted that with relation to the incident dated 4.5.2023, the complaint was lodged on 24.5.2023 and there is an unexplained delay of 20 days in lodging of the complaint which itself erodes the genuineness and the veracity of the allegations contained in the complaint. Further submission is that the present complaint which occasioned summoning the applicants is nothing but a counterblast and a retaliation as with respect to an incident dated 4.5.2023 at 10 in the night an FIR came to be lodged by the applicant himself against Anil Soni, Raja Srinivas, Mukesh Srinivas, who belonged to the opposite party no. 2 faction under Sections 147, 148, 149, 323, 504, 506, 307, 327 IPC before the police station Kotwali Jhansi, FIR no. 0181 with an allegation that on 4.5.2023, the accused in the said FIR principally Anil Soni, who has contested the election, was hurling abuses and administrating threat upon the father of the

applicant and when the applicant received the call, he proceeded to his house however, in between the accused therein who belong to the opposite party no.4 faction were already stationed there well prepared armed with a country made pistol, cuddle etc. and they attacked pursuant where to the applicant sustained injuries. Investigation was conducted and a charge sheet has been submitted.

7. Submission is that in order to exert pressure and force the applicant to enter into compromise, the complaint has been lodged on 24.5.2023 with regard to the incident dated 4.5.2023. It is also submitted that there is no independent witness however, whoever have deposed, they are the interested witnesses being the relative of the victim. Argument is that the entire sequence of events itself shows that a story has been tailormade just in order to falsely implicate the applicant and it is nothing but a cooked up story.

8. Additionally, it is also submitted that the order dated 7.8.2023 passed by the Special Judge POCSO Act Jhansi treating the application under Section 156(3) of the Cr.P.C as complaint case also suffers from non-application of mind.

9. Lastly, it has also been argued that the summing order itself has been passed in a mechanical manner on mere asking without recording any satisfaction that the prima facie case is made out. It is just prayed that the proceedings be quashed.

10. Sri Fakhr ur Zaman, learned counsel for the opposite party no.4, while countering the submission of the learned counsel for the applicant has submitted that the order dated 7.8.2023 treating the proceedings under Section 156(3) Cr.P.C. into a complaint cannot be said to be illegal particularly when the court below after considering the case was within its jurisdiction treated the case to be a complaint case. He further submits that from the narration of the allegations contained in the complaint vis-a-vis the statement of the complainant/victim and others under Sections 200, 202 of the Cr.P.C. itself shows that the statements support the prosecution case. According to him the argument so raised by the counsel for the applicant that the present complaint is a counterblast is not a factor which is to be considered at this stage particularly when it can be at best a defence. According to him the delay in lodging of the proceeding under Section 156 of the Cr.P.C. was an account of the fact that the FIR was not being lodged despite efforts then the opposite party no. 4 had no option but to lodge a complaint on the public grievances portal and followed by a complaint to the S.S.P. and then the present complaint was lodged. He thus submits that

the summoning order has been passed after considering each and every aspect of the matter and needs no interference.

11. Learned AGA has supported the argument of the counsel for the opposite party no. 2 and submits that the summoning order is perfectly valid in accordance with the law no fault whatsoever can be attributed in this regard.

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

13. This Court in the present proceedings is confronted with a challenge raised at the instance of the applicant to a summoning order summoning the applicant under Section under Sections 354Ka, 354 Kha, 504 IPC read with Section 7/8 of the POCSO Act. In order to test whether the summoning order suffers from illegality or not, there are certain criterias which needs to be noticed. Amongst other one of them, is the allegations contained in the complaint vis-à-vis the statements of the witnesses under Section 200 and 202 of the Cr.P.C. Applying the said principles in the facts of the case, it is apparent that with relation to an incident dated 4.5.2023, proceedings came to be initiated under Section 156(3) of the Cr.P.C. by the opposite party no. 4 on 24.5.2023 with an allegation that on 4.5.2023, the applicant along with the other accused at 10 in the night banged the door and when the door was open, he along with the other co-accused barged and committed the offences while touching the chest of the victim, who is minor and tore the clothes. The complainant in her statement under Section 200 of the Cr.P.C. has supported the version so contained in the complaint wherein it has been alleged that the victim was beaten and and the applicant herein touched the chest and her clothes were torn. So much so, the statement of one of the other witnesses, who was also subjected to indecent gesture being Anita Shrivastava also supported the prosecution theory and she also deposed that the applicant touched the chest of the victim and tore her clothes and he also committed indecent act and made certain obscene gestures against the other family members. On the top of it, the victim in her statement under section 202 of the Cr.P.C. has also supported the prosecution theory wherein she has alleged that the applicant has touched her chest and tore her clothes.

14. The court below while summoning the applicant has considered the allegations contained in the complaint and the statements under Sections 200 and 202 of the Cr.P.c. of the witnesses and after being prima facie satisfied, had summoned the applicant under section under Sections 354Ka, 354 Kha, 504 IPC

read with Section 7/8 of the POCSO Act. What is understandable is that at the stage of summoning, the merits of the allegations cannot be adjudged or addressed, however, the relevant factor would be that the case is triable.

15. Much Emphasis has been made to the fact that with respect to an incident dated 4.5.2023 at 10 in the night, the candidate who had contested the election bore enmity with the applicant's father/faction and had threatened the father of the applicant and on a telephonic call received by the applicant, when the applicant proceeded to his house, then the opposite party no.4 faction attacked him so, FIR came to be lodged in the above noted sections, under Sections 147, 148, 149, 323, 504, 506, 307 and 327 IPC, on the next day i.e. 5.5.2023 which acted as a catalyst in lodging of the complaint. The allegation of retaliation or a counter blast has been disputed by the learned counsel for the opposite party no.4 while contending that the address of the applicant and of the opposite party no.4 is of the same locality, thus it cannot be outrightly ruled out that there is no possibility of occurrence of the said incident. In the opinion of the Court, this Court is not required to delve into the said factual aspect. These are the issues which are to be thrashed out when the trial commences after leading of the evidence. In other words what is required to be seen is whether the statements of the prosecution witnesses under Sections 200 and 202 of the Cr.P.C. support the prosecution theory or not. Importantly, in the present case, the witnesses support the prosecution theory and there is no contradiction or variation in that regard. Thus, it would not be appropriate for this Court to throttle the investigation at this stage as whatever defences are there magnitude or velocity would be tested on its own strength during the trial when the decision is to be taken whether it is a case of acquittal or conviction.

16. Nonetheless, so far as the objections so raised by the learned counsel for the applicant, that the court below erred in law in treating the proceedings under section 156(3) of the Cr.P.c. as a complaint case is concerned, the said argument as such is liable to be repelled, particularly when, there is no bar under the statute, to treat the proceedings under Section 156(3) of the Cr.P.C to a complaint case. Moreover, the court below while exercising its power has to act in accordance with law and there is no legal infirmity shown in this regard.

17. 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.

18. 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."

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

the court below.

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

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

Order Date :- 14.5.2025/piyush