



2026:000:102541

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 4257 of 2026

Raj Kumar Yadav

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Ambuj Shukla, Vimlendu Tripathi

Counsel for Opposite Party(s) : G.A., Ratnendu Kumar Singh, Vipul Tripathi

Court No. - 87

HON'BLE PRAVEEN KUMAR GIRI, J.

1. Heard Sri Vimlendu Tripathi, learned counsel for the applicant, Sri Shashidhar Pandey, learned A.G.A. for the State and Sri Ratnendu Kumar Singh, learned counsel for O.P. no.2.

2. Learned counsel for the applicants submits that he has filed the instant application under Section 528 BNSS with the relief which has been mentioned in the prayer clause of the application. The relief which has been mentioned in the application is delineated below:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow this Criminal Misc. application and to quash the entire proceedings of Complaint Case No.57 of 2025, under sections 376 D, 504, 506 of IPC and section 3(2)(V) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Police Station-Roberts Ganj, District-Sonbhadra (arising out of Case Crime No. 551 of 2024) and as a necessary consequence, may further graciously be pleased to quash the impugned summoning order dated 23.07.2025 and the impugned cognizance order dated 30.05.2025 passed by the court of learned Special Judge SC/ST Act., Sonbhadra, so that justice may be done.

And, during the pendency of the above-noted Criminal Misc. Application, this Hon'ble Court may further kindly be pleased to stay the further proceedings of Complaint Case No. 57 of 2025, under sections 376 D, 504, 506 of IPC and section 3(2)(V) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Police Station-Roberts Ganj, District-Sonbhadra (arising out of Case Crime No. 551 of 2024) pending in the court of learned Special Judge SC/ST Act, Sonbhadra, during the pendency of the instant criminal misc. application before this Hon'ble Court; otherwise, the applicant shall suffer irreparable loss and injury."

3. Learned counsel for the applicant submits that :-

(i) the alleged incident occurred on 06.01.2024.

(ii) for the alleged incident the opposite party no. 2 filed an application under Section 156(3) Cr.P.C.

(iii) the said application under Section 156(3) Cr.P.C. has been allowed vide order dated 04.07.2024 with a direction for lodging an FIR against the revisionist and one co-accused Jag Narayan.

(iv) In compliance of order dated 04.07.2024, an F.I.R. was registered on 29.07.2024 as Case Crime No. 551 of 2024 under Sections 376D, 504 and 506 I.P.C. and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, P.S.Robertsganj, District-Sonbhadra.

(v) During the course of investigation it was found that the criminal proceeding was initiated as a counter blast to the earlier case instituted by co-accused Jag Narayan against O.P. No.2 and her husband wherein they have been sent to jail and the criminal proceeding is still pending.

(vi) After completion of investigation, police came to a conclusion that no such alleged incident has occurred, therefore, police report (final report/closure report) has been prepared and submitted before the concerned court on 12.09.2024.

(vii) After submission of closure report by the police, O.P No.2 filed protest petition on 23.05.2025 in the court of Special Judge, SC/ST Act, Sonbhadra and the learned Special Judge, vide order dated 30.05.2025, rejected the final report and treated the protest petition as a criminal complaint.

(viii) The concerned court on 11.6.2025, recorded statement of the complainant/O.P. No.2 under Section 200 Cr.P.C./223 BNSS and further on 26.06.2025 recorded statement of the witness under Section 202 Cr.P.C./225 BNSS.

(ix) Learned Special Judge, SC/ST Act, Sonbhadra ignoring the provisions of Section 223(1) First Proviso, without providing opportunity of hearing to the applicant/accused has summoned him vide order dated 23.07.2025 under Sections 370-D, 504 and 506 I.P.C. and Section 3(2)(v) of the SC/ST Act, P.S.Robertsganj, District-Sonbhadra.

(x) That the case of the revisionist shall be dealt with BNSS as it is w.e.f. 01.07.2024 and as per saving clause Section 531(2)(a) BNSS, therefore, as per Section 223(1) BNSS, before passing an order of cognizance-cum-summoning order opportunity of hearing shall be given to the applicant accused, while no opportunity has been given to the applicant accused.

4. The provisions of Section 531(2)(a) of the BNSS and Section 223 BNSS are being delineated below for ready reference :-

"Section 531. Repeal and savings.

(1) The Code of Criminal Procedure, 1973 (2 of 1974) is hereby repealed.

(2) Notwithstanding such repeal---

(a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force;

(b) all notifications published, proclamations issued, powers conferred, forms provided by rules, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the said Code and which are in force immediately before the commencement of this Sanhita, shall be deemed, respectively, to have been published, issued, conferred, specified, defined, passed or made under the corresponding provisions of this Sanhita;

(c) any sanction accorded or consent given under the said Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have been accorded or given under the corresponding provisions of this Sanhita and proceedings may be commenced under this Sanhita in pursuance of such sanction or consent.

(3) Where the period specified for an application or other proceeding under the said Code had expired on or before the commencement of this Sanhita, nothing in this Sanhita shall be construed as enabling any such application to be made or proceeding to be commenced under this Sanhita by reason only of the fact that a longer period therefor is specified by this Sanhita or provisions are made in this Sanhita for the extension of time."

"223. Examination of complainant.-(1) A Magistrate having

jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard:

Provided further that when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 212:

Provided also that if the Magistrate makes over the case to another Magistrate under section 212 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

(2) A Magistrate shall not take cognizance on a complaint against a public servant for any offence alleged to have been committed in course of the discharge of his official functions or duties unless-

(a) such public servant is given an opportunity to make assertions as to the situation that led to the incident so alleged; and

(b) a report containing facts and circumstances of the incident from the officer superior to such public servant is received."

5. Learned counsel for the applicant further submits that the criminal proceeding was initiated against the applicant after 01.07.2024, therefore, as per paragraph 16(iv) of the judgment of **Deepu and Ors. v State of U.P. and Ors., (2024) 8 ILRA 903 (Crl. Misc. Writ Petition No.12287 of 2024)** as well as provisions of Section 531(2)(a) BNSS, the provisions of Bharatiya Nagarik Suraksha Sanhita, 2023 are applicable in the case in hand. For ready reference, paragraph 16 of the judgment of **Deepu and others (supra)** is being quoted below :-

“16 .On the basis of above analysis, this Court is also summarising the law regarding effect of repealing the IPC and Cr.P.C. by BNS and BNSS respectively and same is being mentioned as below:

(i) If an FIR is registered on or after 1.7.2024 for the offence committed prior to 1.7.2024, then FIR would be registered under the provisions of IPC but the investigation will continue as per BNSS.

(ii) In the pending investigation on 01.07.2024 (on the date of commencement of New Criminal Laws), investigation will continue as per the Cr.P.C. till the cognizance is taken on the police report and if any direction is made for further investigation by the competent Court then same will continue as per the Cr.P.C.;

(iii) The cognizance on the pending investigation on or after 01.07.2024 would be taken as per the BNSS and all the subsequent proceeding including enquiry, trial or appeal would be conducted as per the procedure of BNSS.

(iv) Section 531(2)(a) of BNSS saved only pending investigation, trial, appeal, application and enquiry, therefore, if any trial, appeal, revision or application is commenced after 01.07.2024, the same will be proceeded as per the procedure of BNSS.

(v) The pending trial on 01.07.2024, if concluded on or after 01.07.2024 then appeal or revision against the judgement passed in such a trial will be as per the BNSS. However, if any application is filed in appeal, which was pending on 01.07.2024 then the procedure of Cr.P.C. will apply.

(vi) If the criminal proceeding or chargesheet is challenged before the High Court on or after 01.07.2024, where the investigation was conducted as per Cr.P.C. then same will be filed u/s 528 of BNSS not u/s 482 Cr.P.C.”

(emphasis supplied)

6. Learned counsel for the applicant submits that one co-accused Jag Narayan was also summoned by summoning order dated 23.07.2025, and he has filed **Crl. Misc. Application(under Section 528 BNSS) No.35771 of 2025 (Jag Narayan vs. State of U.P. and other)** and this Court vide order dated 29.10.2025 has dismissed the application as withdrawn. For ready reference, the order dated 29.10.2025 is delineated below :-

"1. The full Bench judgment passed in Ghulam Rasool Khan and others Vs. State of U.P. and others the Court in para-17 (iii) has held that Question No. (III) is answered in negative holding that the aggrieved person having remedy of appeal under Section 14A of the 1989 Act,

cannot be allowed to invoke inherent jurisdiction of this Court under Section 482 Cr.P.C.

2. In view of the aforesaid judgment, the applicant is permitted to withdraw the application with liberty to avail appropriate remedy.

3. The application is, accordingly dismissed as withdrawn with liberty to avail alternative remedy.

4. Certified copy of the F.I.R./order sheet be returned to the applicant as per rule after retaining a photo-stat copy of the same on the record.

5. This order is passed in presence of learned counsel appearing on behalf of opposite party no.2.

6 . Learned counsel for the applicant shall provide a copy of the application to counsel for the opposite party no.2."

7. Learned counsel for the applicant submits that in compliance of aforesaid order, the applicant preferred an appeal under Section 14A(1) of the SC/ST Act before this Court being **Criminal Appeal no.10447 of 2025 (Jag Narayan vs. State of U.P. and another)**, and the same was disposed of vide order dated 15.11.2025. He further submits that though co-accused Jag Narayan has filed the appeal challenging the summoning order on the facts but he has not taken plea of Section 223(1) First Proviso as he has not been provided opportunity of hearing before taking cognizance as well as summoning him. The order dated 15.11.2025 is being delineated below :-

"1. Heard learned counsel for the appellant and learned A.G.A for the State as well as perused the record.

2. The present criminal appeal under Section 14-A(1) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been preferred to set-aside the impugned summoning order dated 23.07.2025 in Complaint Case No.57 of 2025 (Kajal Kumari Vs. Jagnarayan and another) under Sections 376D, 504, 506 IPC and 3(2)(V) of SC/ST Act, Police Station- Robertsganj, District- Sonbhadra, pending in the court of Special Judge SC/ST Act, Sonbhadra.

3. The contention of the learned counsel for the appellant is that no offence against the appellant is disclosed and the present prosecution has been instituted with malafide intentions for the purposes of harassment.

4. Per contra, the learned AGA opposed the appeal and submitted that at the stage of summoning the accused, the Magistrate/Court dealing with the matter is required to apply judicial mind only with a view to take cognizance of the offence to find-out as to whether prima-facie case has

been made out to summon the accused or not. There is no infirmity or illegality in the impugned order warranting interference by this Court. Hence, the appeal having no force is liable to be dismissed.

5. From the perusal of material on record and looking into the facts of the case at this stage it cannot be said that no offence is made out against the appellant. All the submissions made at the bar relates to the disputed question of fact, which cannot be adjudicated upon by this Court. At this stage only prima facie case is to be seen in the light of the law laid down by Supreme Court in cases of R.P. Kapur Vs. State of Punjab, A.L.R. 1960 S.C. 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P.Sharma, 1992 SCC (Cr.) 192 and lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283. The disputed defence of the accused cannot be considered at this stage. Moreover, the applicant has got a right of discharge as the case may be, before the court below and he is free to take all the submissions in the said discharge application before the trial court.

6. The prayer for quashing the proceedings of case as well as cognizance/summoning order is refused.

7. However, it is provided that if the applicant appears and surrenders before the court below and apply for bail, his prayer for bail shall be considered and decided in accordance with law.

8. With the aforesaid directions, this criminal appeal is finally disposed off."

8. Learned counsel for the applicant submits that against the order dated 15.11.2025 passed by this Court, co-accused Jag Narayan before the Hon'ble Supreme Court has filed **Special Leave to Appeal (Crl.) No.1212 of 2026**, which has been dismissed in limine vide order dated 27.01.2026. The order dated 27.01.2026 passed by the Hon'ble Supreme Court is being delineated below:-

"1. Having heard Mr. Rahul Mishra, learned counsel appearing for the petitioner, we find no good ground to interfere with the impugned order. The special leave petition is dismissed.

2. Pending application(s), if any, shall stand disposed of."

9. Learned counsel for the applicant has further submits that the name of the applicant has not been disclosed in the earlier litigation. He further submits that the applicant has been implicated in this case at a later stage as an after thought just to create pressure upon the main accused Jag Narayan, as the applicant is his relative.

10. Learned counsel for the applicant further submits that in the present case, no opportunity of hearing was ever afforded to the applicant prior to passing of the impugned cognizance-cum-summoning order, therefore, the same is not sustainable in the eyes of law. Learned counsel for the applicant further submits that thus the impugned summoning order is violative of Article 21, as no person shall be deprived of his life or personal liberty except in accordance with the procedure established by law. Learned counsel for the applicant has filed two supplementary affidavits and one written argument, which are part of the paper book.

11. Learned counsel for the applicant further submits that :-

(A) The issue of opportunity of hearing to the applicant, as required in the proviso of Section 223(1) of BNSS, 2023 (w.e.f. 01.07.2024) has not been raised by the co-accused Jag Narayan, either before the Hon'ble High Court or before the Hon'ble Supreme Court.

(B) The dismissal of the 482 petition filed by the co-accused and the in limine dismissal of its Special Leave Petition does not create a bar to filing a 482 petition by another accused. To buttress his argument, he has placed reliance on paragraphs 3.7, 3.8, 3.9, 39 and 40 of the judgment passed by Hon'ble Supreme Court in the case of **B.N. John vs. State of U.P. and others, 2025 SCC Online SC 7**. The paragraphs 3.7, 3.8, 3.9, 39 and 40 are being quoted below :

"3.7 Accordingly, the appellant approached the Allahabad High Court invoking jurisdiction under Section 482 of the CrPC seeking quashing of the aforesaid proceedings, that is, Crime Case No. 290 of 2015 pending before the CJM, Varanasi and orders taking cognizance and issuing summons in that regard.

3.8 The Allahabad High Court on perusal of the FIR No.290/15 and the statement of witnesses recorded under Section 161 of the CrPC held that a prima facie case has been made out against the appellant for being summoned and for prosecution under the aforesaid Sections 353 and 186 of the IPC and declined his plea for quashing the aforesaid criminal case which was pending before the CJM, Varanasi.

3.9 While dismissing the petition filed by the appellant, the Allahabad High Court referred to an earlier decision of the High Court in rejecting the application filed by the co-accused seeking quashing of the aforesaid proceedings under Section 482 of the CrPC which was affirmed by this Court on 13.04.2017 by dismissing the SLP in limine.

39. We have also perused the order dated 13.10.2015 passed by the High Court in the earlier case filed by Mrs. Susan John, the co-accused, wherein the High Court declined to quash the charge sheet No. 162 of

2015 dated 20.6.2015 in the same Case Crime No. 290 of 2015 pending before the Court of CJM, Varanasi, on the ground that perusal of the material on record and looking into the facts of the case at that stage, it cannot be said that no offence is made out against the applicant, and all the submissions made at the Bar relate to the disputed questions of fact, which cannot be adjudicated by the court under Section 482 of the CrPC, and at that stage only the prime facie case is to be seen in the light of the law laid down by this Court in the cases of R P Kapoor vs. State of Punjab, AIR 1960 SC 866; State of Haryana vs. Bhajan Lal (supra); State of Bihar vs. PP Sharma, 1992 SCC (Cr) 192; and Zandu Pharmaceutical Works Ltd. vs. Mohd. Saraful Haq and another, 2005 SCC(Cr) 283.

40. However, it is noticed that the High Court did not examine any of the issues as discussed above in this appeal. The said decision of the High Court was not interfered with by this Court, and the SLP filed against the said order dated 13.10.2015 was dismissed in limine by this Court."

(C) The dismissal of the earlier 482 petition does not bar the filing of a subsequent petition u/s 482, in case the facts so justify. To buttress his argument he has placed reliance on paragraph 4 of the judgment passed by Hon'ble Supreme Court in **Vinod Kumar, IAS vs. Union of India and others, Writ Petition (Crl.) No.255 of 2021** as well as paragraph 1 and 2 of the judgment passed by Hon'ble Supreme Court in **Superintendent and Remembrancer of Legal Affairs, West Bengal vs. Mohan Singh and others, (1975) 3 SCC 706**. Paragraph 4 of the judgment in **Vinod Kumar (supra)** is being quoted below :-

" The law on point as held by this Court in "Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh & Ors." reported in SCC (1975) 3 706 is clear that dismissal of an earlier 482 petition does not bar filing of subsequent petition under Section 482, in case the facts so justify."

Paragraphs 1 and 2 of the judgment in **Superintendent and Remembrancer of Legal Affairs (supra)** are being quoted below :-

"1. On 17th May, 1965 a lorry loaded with heavy logs of wood was driven by the third respondent through a narrow lane off Kalighat Road and brought to a halt in front of a saw mill of which Respondent No. 1 was the owner and Respondent No. 2, the manager. Whilst the logs of wood were being unloaded from the lorry by two coolies, they fell on a girl called Mita Mukherjee and resulted in her death. A first information report was thereupon lodged with Bhawanipur Police Station against Respondents Nos. 2 and 3 and the two coolies who were unloading the logs of wood. On the basis of this first information report, Respondents Nos. 2 and 3 were prosecuted in the Court of the Magistrate, Alipore. Respondent No. 1 was also joined as an accused though his name did not appear in the

first information report. The two coolies were absconding and they were, therefore, left out of the criminal case. The charge against Respondent No. 1 was that though residents of the locality had repeatedly asked him not to allow entry of lorries dangerously loaded with heavy logs of wood into the narrow lane, he did not pay any heed and on or about 17th May, 1965 the third respondent engaged by him drove the lorry in question dangerously with heavy logs of wood and kept the lorry in the narrow lane in front of the saw mill rashly and negligently and his manager, the 2nd respondent, had logs of wood unloaded rashly and negligently without due care and caution to guard against the dangerous consequences and caused the death of Mita Mukherjee and thereby committed an offence under Section 304A read with Section 109 of the Indian Penal Code. There was also a similar charge against respondent No. 2 under Section 304A of the Indian Penal Code. The 1st respondent filed an application being Criminal Revision No. 1375 of 1965 in the Calcutta High Court for quashing the proceeding on the ground that it constituted an abuse of the process of the Court and in any event, its quashing would secure the ends of justice. A Division Bench of the High Court rejected the application by an Order dated 12th December, 1968. The only ground on which the application was rejected was that "the points raised... depend on certain questions of fact which have to be ascertained on evidence by the Court of facts" and the Division Bench did not, therefore, propose "to interfere with the proceeding against the petitioner at this stage". Though this Order rejecting the application was made on 12th December, 1968, no progress at all was made in the criminal case until March, 1970. Respondents Nos. 1 and 2, therefore, once again moved the Calcutta High Court for quashing the proceeding and this time the Division Bench of the High Court by an Order dated 7th April, 1970 allowed the application and quashed the proceeding on the ground that no prima facie case was at all made out and the continuance of the proceeding was, therefore, an abuse of the process of the Court. The State was of the view that once the High Court had rejected an application for quashing the proceeding by its Order dated 12th December, 1968, it was not competent to the High Court to entertain another application for the same purpose as that would amount to the High Court reviewing its earlier Order which the High Court had no jurisdiction to do: An application was, therefore, made by the State to the High Court for leave to appeal to this Court under Article 134 of the Constitution and such leave was granted by an Order dated 25th November, 1970. Hence, the present appeal.

2. The main question debated before us was whether the High Court had jurisdiction to make the Order, dated 7th April, 1970 quashing the proceeding against Respondents Nos. 1, 2 and 3 when on an earlier application made by the 1st respondent, the High Court had by its Order dated 12th December, 1968 refused to quash the proceeding. Mr.

Chatterjee on behalf of the State strenuously contended that the High Court was not competent to entertain the subsequent application of Respondents Nos. 1 and 2 and make the Order dated 7th April, 1970 quashing the proceeding, because that was tantamount to a review of its earlier Order by the High Court, which was outside the jurisdiction of the High Court to do. He relied on two decisions of the Punjab and Orissa High Courts in support of his contention, namely, Hoshier Singh v. The State and Namdeo Sindhi v. The State . But we fail to see how these decisions can be of any help to him in his contention. They deal with a situation where an attempt was made to persuade the High Court in exercise of its revisional jurisdiction to reopen an earlier drctet passed by it in appeal or in revision finally disposing of a criminal proceeding and it was held, that the High Court had no, jurisdiction to revise its earlier Order, because the power of revision could be exercised only against an Order of a subordinate Court. Mr. Chatterjee also relied on a decision of this Court in U. J. S. Chopra v. State of Bombay where M. H. Bhagwati, J., speaking on behalf of himself and Imam, J., observed that once a judgment has been pronounced by the High Court either in exercise of its appellate or its revisional jurisdiction, no review or revision can be entertained against that judgment and there is no provision in the Criminal Procedure Code which would enable the High Court to review the same or to exercise revisional jurisdiction over the same. These observations were sought to be explained by Mr. Mukherjee on behalf of the first respondent by saying that they should not be read as laying down any general proposition excluding the applicability of Section 561A in respect of an Order made by the High Court in exercise of its appellate or revisional jurisdiction even if the conditions attracting the applicability of that Section were satisfied in respect of such Order, because that was not the question before the Court in that case and the Court was not concerned to inquire whether the High Court can in exercise of its inherent power under Section 561A review an earlier Order made by it in exercise of its appellate or revisional jurisdiction. The question as to the scope and ambit of the inherent power of the High Court under Section 561A vis-a-vis an earlier Order made by it was, therefore, not concluded by this decision and the matter was res Integra so far as this Court is concerned. Mr. Mukherjee cited in support of this contention three decisions, namely, Raj Narain v. The State , Lai Singh v. The State. and Ram Vallabh v. State of Bihar . It is, however, not necessary for us to examine the true effect of these observations as they have no application because the present case is not one where the High Court was invited to revise or review an earlier Order made by it in exercise of its revisional jurisdiction finally disposing of a criminal proceeding. Here, the situation is wholly different. The earlier application which was rejected by the High Court was an application under Section 561A of the CrPC to quash the proceeding and the High Court rejected it on the ground that the evidence was yet to be led and it was not desirable to interfere with the

proceeding at that stage. But, thereafter, the criminal case dragged on for a period of about one and half years without any progress at all and it was in these circumstances that respondents Nos. 1 and 2 were constrained to make a fresh application to the High Court under Section 561-A to quash the proceeding. It is difficult to see how in these circumstances it could ever be contended that what the High Court was being asked to do by making the subsequent application was to review or revise the Order made by it on the earlier application. Section 561-A preserves the inherent power of the High Court to make such Orders as it deems fit to prevent abuse of the process of the Court or to secure the ends of justice and the High Court must, therefore, exercise its inherent powers having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked. The High Court was in the circumstances entitled to entertain the subsequent application of Respondents Nos. 1 and 2 and consider whether on the facts and circumstances then obtaining the continuance of the proceeding against the respondents constituted an abuse of the process of the Court or its quashing was necessary to secure the ends of justice. The facts and circumstances obtaining at the time of the subsequent application of respondents Nos. 1 and 2 were clearly different from what they were at the time of the earlier application of the first respondent because, despite the rejection of the earlier application of the first respondent, the prosecution had failed to make any progress in the criminal case even though it was filed as far back as 1965 and the criminal case rested where it was for a period of over one and a half years. It was for this reason that, despite the earlier Order dated 12th December, 1968, the High Court proceeded to consider the subsequent application of respondents Nos. 1 and 2 for the of deciding whether it should exercise its inherent jurisdiction under Section 561 A. This the High Court was perfectly entitled to do and we do not see any jurisdictional infirmity in the Order of the High Court. Even on the merits, we find that the Order of the High Court was justified as no prima facie case appears to have been made out against respondents Nos. 1 and 2."

(D) The dismissal at the stage of special leave without reasons does not amount to res judicata, and the doctrine of merger does not apply. In support of his submission he has placed reliance on paragraphs 14, 15, 17 and 18 of the judgment passed by the Hon'ble Supreme Court in **Kunhayammed and others vs. State of Kerala and another, (2000) 6 SCC 359**. Paragraphs 14, 15, 17 and 18 of the aforesaid judgment are being quoted below :-

"14. The exercise of jurisdiction conferred on this Court by Article 136 of the Constitution consists of two steps : (i) granting special leave to appeal; and (ii) hearing the appeal. This distinction is clearly demonstrated by the provisions of Order XVI of the Supreme Court Rules

framed in exercise of the power conferred by Article 145 of the Constitution. Under Rule 4, the petition seeking special leave to appeal filed before the Supreme Court under Article 136 of the Constitution shall be in form No.28. No separate application for interim relief need be filed, which can be incorporated in the petition itself. If notice is ordered on the special leave petition, the petitioner should take steps to serve the notice on the respondent. The petition shall be accompanied by a certified copy of the judgment or order appealed from and an affidavit in support of the statement of facts contained in the petition. Under Rule 10 the petition for grant of special leave shall be put up for hearing ex-parte unless there be a caveat. The court if it thinks fit, may direct issue of notice to the respondent and adjourn the hearing of the petition. Under Rule 13, the respondent to whom a notice in special leave petition is issued or who had filed a caveat, shall be entitled to oppose the grant of leave or interim orders without filing any written objections. He shall also be at liberty to file his objections only by setting out the grounds in opposition to the questions of law or grounds set out in the S.L.P.. On hearing the Court may refuse the leave and dismiss the petition for seeking special leave to appeal either ex-parte or after issuing notice to the opposite party. Under Rule 11, on the grant of special leave, the petition for special leave shall, subject to the payment of additional court fee, if any, be treated as the petition of appeal and it shall be registered and numbered as such. The appeal shall then be set down for hearing in accordance with the procedure laid down thereafter. Thus, a petition seeking grant of special leave to appeal and the appeal itself, though both dealt with by Article 136 of the Constitution, are two clearly distinct stages. In our opinion, the legal position which emerges is as under :-

- 1. While hearing the petition for special leave to appeal, the Court is called upon to see whether the petitioner should be granted such leave or not. While hearing such petition, the Court is not exercising its appellate jurisdiction; it is merely exercising its discretionary jurisdiction to grant or not to grant leave to appeal. The petitioner is still outside the gate of entry though aspiring to enter the appellate arena of Supreme Court. Whether he enters or not would depend on the fate of his petition for special leave;*
- 2. If the petition seeking grant of leave to appeal is dismissed, it is an expression of opinion by the Court that a case for invoking appellate jurisdiction of the Court was not made out;*
- 3. If leave to appeal is granted the appellate jurisdiction of the Court stands invoked; the gate for entry in appellate arena is opened. The petitioner is in and the respondent may*

also be JJ called upon to face him, though in an appropriate case, in spite of having granted leave to appeal, the court may dismiss the appeal without noticing the respondent.

4. In spite of a petition for special leave to appeal having been filed, the judgment, decree or order against which leave to appeal has been sought for, continues to be final, effective and binding as between the parties. Once leave to appeal has been granted, the finality of the judgment, decree or order appealed against is put in jeopardy though it continues to be binding and effective between the parties unless it is a nullity or unless the Court may pass a specific order staying or suspending the operation or execution of the judgment, decree or order under challenge.

Dismissal at stage of special leave - without reasons - no res judicata, no merger

15. Having so analysed and defined the two stages of the jurisdiction conferred by Article 136, now we proceed to deal with a number of decisions cited at the Bar during the course of hearing and dealing with the legal tenor of an order of Supreme Court dismissing a special leave petition. In Workmen of Cochin Port Trust Vs. Board of Trustees of the Cochin Port Trust and Another 1978 (3) SCC 119, a Three-Judges Bench of this Court has held that dismissal of special leave petition by the Supreme Court by a non-speaking order of dismissal where no reasons were given does not constitute res judicata. All that can be said to have been decided by the Court is that it was not a fit case where special leave should be granted. That may be due to various reasons. During the course of the judgement, their Lordships have observed that dismissal of a special leave petition under Article 136 against the order of a Tribunal did not necessarily bar the entertainment of a writ petition under Article 226 against the order of the Tribunal. The decision of Madras High Court in The Management of W. India Match Co. Ltd. Vs. Industrial Tribunal, AIR 1958 Mad 398, 403 was cited before their Lordships. The High Court had taken the view that the right to apply for leave to appeal to Supreme Court under Article 136, if it could be called a right at all, cannot be equated to a right to appeal and that a High Court could not refuse to entertain an application under Article 226 of the Constitution on the ground that the aggrieved party could move Supreme Court under Article 136 of the Constitution. Their Lordships observed that such a broad statement of law is not quite accurate, although substantially it is correct.

17. Thereafter the employer approached the High Court by preferring a petition under Article 226 of the Constitution seeking quashing of the award of the Labour Court. On behalf of the employee the principal

contention raised was that in view of the order of the Supreme Court dismissing the special leave petition preferred against the award of the Labour Court it was not legally open to the employer to approach the High Court under Article 226 of the Constitution challenging the very same award. The plea prevailed with the High Court forming an opinion that the doctrine of election was applicable and the employer having chosen the remedy of approaching a superior court and having failed therein he could not thereafter resort to the alternative remedy of approaching the High Court. This decision of the High Court was put in issue before the Supreme Court. This Court held that the view taken by the High Court was not right and that the High Court should have gone into the merits of the writ petition. Referring to two earlier decisions of this Court, it was further held :-

The effect of a non-speaking order of dismissal of a special leave petition, without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to be that this Court had decided only that it was not a fit case where special leave should be granted. This conclusion may have been reached by this Court due to several reasons. When the order passed by this Court was not a speaking one, it is not correct to assume that this Court had necessarily decided implicitly all the questions in relation to the merits of the award, which was under challenge before this Court in the special leave petition. A writ proceeding is a wholly different and distinct proceeding. Questions which can be said to have been decided by this Court expressly, implicitly or even constructively while dismissing the special leave petition cannot, of course, be re-opened in a subsequent writ proceeding before the High Court. But neither on the principle of res judicata nor on any principle of public policy analogous thereto, would the order of this Court dismissing the special leave petition operate to bar the trial of identical issues in a separate proceeding namely, the writ proceeding before the High Court merely on the basis of an uncertain assumption that the issues must have been decided by this Court at least by implication. It is not correct or safe to extend the principle of res judicata or constructive res judicata to such an extent so as to found it on mere guesswork.

It is not the policy of this Court to entertain special leave petitions and grant leave under Article 136 of the Constitution save in those cases where some substantial question of law of general or public importance is involved or there is manifest injustice resulting from the impugned

order or judgment. The dismissal of a special leave petition in limine by a non-speaking order does not therefore justify any inference that by necessary implication the contentions raised in the special leave petition on the merits of the case have been rejected by this Court. It may also be observed that having regard to the very heavy backlog of work in this Court and the necessity to restrict the intake of fresh cases by strictly following the criteria aforementioned, it has very often been the practice of this Court to grant special leave in cases where the party cannot claim effective relief by approaching the concerned High Court under Article 226 of the Constitution. In such cases also the special leave petitions are quite often dismissed only by passing a non-speaking order especially in view of the rulings already given by this Court in the two decisions afore-cited, that such dismissal of the special leave petition will not preclude the party from moving the High Court for seeking relief under Article 226 of the Constitution. In such cases it would work extreme hardship and injustice if the High Court were to close its doors to the petitioner and refuse him relief under Article 226 of the Constitution on the sole ground of dismissal of the special leave petition.

18. In our opinion what has been stated by this Court applies also to a case where a special leave petition having been dismissed by a non-speaking order the applicant approaches the High Court by moving a petition for review. May be that the Supreme Court was not inclined to exercise its discretionary jurisdiction under Article 136 probably because it felt that it was open to the applicant to move the High Court itself. As nothing has been said specifically in the order dismissing the special leave petition one is left merely guessing. We do not think it would be just to deprive the aggrieved person of the statutory right of seeking relief in review jurisdiction of the High Court if a case for relief in that jurisdiction could be made out merely because a special leave petition under Article 136 of the Constitution had already stood rejected by the Supreme Court by a non-speaking order.

(E) The principle of res judicata has no application in a criminal proceeding, and there is no blanket rule in the filing of subsequent petitions under section 482 Cr.P.C. under changing facts and circumstances. To buttress his argument, he has placed reliance on paragraphs 17, 18, 19 and 20 of judgment passed by Hon'ble Supreme Court in **Muskan Enterprises and another vs. State of Punjab and another, 2024 SCC Online SC 4107**. Paragraphs 17, 18, 19 and 20 of the aforesaid judgment are being quoted below :-

"17. That the principle of res judicata has no application in a criminal proceeding was reiterated by this Court in Devendra v. State of U.P.12.

18. Recently, this Court in Bhisham Lal Verma v. State of U.P13, has again held that there is no blanket rule against filing of successive petition under section 482, Cr. PC before the high court. It was also held that if such a petition is filed, it must be seen (2007) 4 SCC 70 (2009) 7 SCC 495 2023 SCC OnLine SC 1399 whether there was any change in facts or circumstances, necessitating the filing of such petition.

19. Section 482, Cr. PC, on its own terms, saves the inherent powers of the high court to make such orders as may be necessary (i) to give effect to any order under the Cr. PC, or (ii) to prevent abuse of the process of any court, or (iii) to secure the ends of justice. Change of law can legitimately be regarded as a vital change in circumstance clothing the high court with the power, competence and jurisdiction to entertain the subsequent petition notwithstanding the fact that the earlier petition was withdrawn without obtaining any leave, subject to the satisfaction recorded by the high court that the order prayed for in the subsequent petition ought to be made, inter alia, either to prevent abuse of the process of any court or to secure the ends of justice.

20. Thus, in our considered opinion, the constricted view taken by High Court to hold that the appellants were required to obtain the leave of the Judge who had dismissed the earlier petition prior to filing the subsequent petition is clearly untenable and not warranted in law. It is noted that the appellants had applied a second time before the High Court only when the law on interpretation of Section 148, N.I. Act was laid down somewhat differently in Jamboo Bhandari (supra) and not on any other ground. It was not a review in disguise that the appellants attempted but their endeavour was to impress the High Court to have the law, currently governing the field, to be applied in their case. In terms of the authorities referred to above, the subsequent petition was well-nigh maintainable."

12. Learned counsel for the applicant further submits that :-

(A) the learned Special Judge has failed to adhere to the mandatory procedure prescribed under Section 223(1), first proviso of the BNSS, which categorically mandates that no Court shall take cognizance of an offence without affording an opportunity of hearing to the accused.

(B) No opportunity of hearing was ever afforded to the applicant before the passing of the impugned summoning and cognizance orders; therefore, the same are not sustainable in the eyes of the law.

(C) In view of failure in providing an opportunity of hearing to the

applicant, the impugned summoning and cognizance orders are violative of Article 21, as no person shall be deprived of his life or personal liberty except in accordance with the procedure established by law.

(D) The Hon'ble High Court has held that the proviso of Section 223(1) BNSS mandates an opportunity of hearing to the proposed accused, and if it has not been complied with, the cognizance/summoning order is liable to be quashed, and the matter should be remanded to the court below. To buttress his argument, he has placed reliance on paragraphs 6, 7 and 8 of the judgment passed by this Court in the case of **Mahendra Singh and others vs. State of U.P. and others, 2026 SCC Online All 138**. Paragraphs no.6, 7 and 8 of the aforesaid judgment are being quoted below :-

"6. This Court, in view of the submissions raised by learned counsel for the parties and after perusal of the entire record is setting aside the order dated 20.08.2025 and remits the matter to the Special Judge, S.C./S.T. Act, Agra with a direction to provide an opportunity of hearing to the proposed accused persons as per Section 223 first proviso of BNSS and thereafter pass an order either under Section 226 or under Section 227 BNSS against the accused-applicants and proceed further in accordance with law.

7. Accordingly, the application is disposed of with the aforesaid directions.

8. The trial court is directed to complete all necessary formalities within a period of two months from the date of this order."

13. Learned counsel for O.P. No.2 submits that as per First Proviso of Section 223(1) of the BNSS, the matter may be remitted to the concerned court for providing an opportunity of hearing to the accused/applicant, but he submits that before passing any order by the trial court, O.P. No.2 shall also be provided opportunity to contest the case.

14. Learned counsel for the applicant has given consent to the aforesaid proposal of remission of the matter to the concerned trial court for passing an order afresh, after providing opportunity to both the parties.

15. In the facts and circumstances of the case as well as in view of consent given by learned counsel for the parties, the impugned cognizance-cum-summoning order dated 23.07.2025 passed by the Special Judge, SC/ST Act, Sonbhadra in Complaint Case No.57 of 2025, under Sections 376D, 504 and 506 I.P.C. and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, P.S.Robertsganj, District-Sonbhadra is hereby **set aside** with a direction to the concerned trial court to pass an appropriate order in accordance with law, after providing opportunity of hearing to both the

parties, preferably within a period of 15 days from the date of this order.

16. With the aforesaid directions, the instant application is **disposed of**.

(Praveen Kumar Giri,J.)

May 5, 2026
Manish Himwan