



CRM-M-32047-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-32047-2024

Date of decision: 17.07.2024

Gurpreet Singh

...Petitioner

V/s

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. S.S. Swaich, Advocate for the petitioner.
Mr. Yuvraj Singh, AAG Punjab.
Mr. S.S. Sandhu, Advocate for respondent No.2.

SUMEET GOEL, J. (Oral)

1. The present petition has been filed, under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter to be referred as 'Cr.P.C') for quashing of FIR No.69 dated 01.10.2023 registered at Police Station Women, District Police Commissionerate Ludhiana under Sections 406/498-A of IPC 1860 as also all the proceedings emanating therefrom.

2. On 08.07.2024, the following order was passed:

"Notice of motion.

At the asking of the Court, Mr. Adhiraj Singh, AAG, Punjab appears and accepts notice for respondent No. 1-State of Punjab.

Mr. Sahibjeet Singh Sandhu, Advocate has filed vakalatnama for respondent No. 2. The same be taken on record.

Learned counsel for the rival parties are directed to make submissions qua maintainability of the instant petition which has been filed under Section 482 of Cr.P.C., 1973.

Adjourned to 10.07.2024.

To be shown in the urgent list."



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3. Learned State counsel has raised a preliminary objection/submission that the instant petition, filed on 03.07.2024, under Section 482 of Cr.P.C. is not maintainable in view of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter to be referred as 'BNSS') coming into force w.e.f. 01.07.2024 and the Cr.P.C. having been repealed w.e.f. the same date i.e. 01.07.2024. Learned State counsel has submitted that; in view of mandatory provisions contained in Section 531 and Section 4 of BNSS; the instant petition deserves to be dismissed as being non-maintainable.

4. Controverting the above-said preliminary submission/objection; learned counsel for the petitioner has submitted that the instant petition is maintainable as the same has been filed under Section 482 of Cr.P.C. since the impugned FIR was registered on 01.10.2023 i.e. much before the BNSS came into force. In another words, learned counsel for the petitioner has argued that any petition filed in respect of an FIR registered before 01.07.2024, is required to be filed under Cr.P.C. itself.

5. I have heard the learned counsel for the parties and have gone through the available records of the case.

6. It would be apposite to refer herein to a judgment of this Court titled as ***Abhishek Jain vs. State of U.T. Chandigarh and another*** passed in ***CRM-M-31808-2024***, decided on 11.07.2024; relevant whereof reads as under:

“8. *The enforcement of the new legislated laws in July 2024 namely The Bharatiya Nagarik Suraksha Sanhita, 2023; The Bharatiya Nyaya Sanhita, 2023 and The Bharatiya Sakshya Adhiniyam, 2023 is a significant milestone in the administration of justice in India, a revivification of the dynamism that is foundational to laws and dispensation of justice. The new legislations draw upon the Indian*



Jurisprudence, which infuses a renewed confidence in the Justice system. The Indian laws have now been unburdened of the colonial and imperial remnants, which were causing a slow and sure attrition upon the confidence of the Indian Justice System and also impeding actualization of its full potential. Indubitably, generations of various stakeholders, especially those who are fully-versed with the prior laws and resulting habituation, will likely feel precarious, even anxious and, in some cases, even entirely ambivalent due to these vicissitudes. These are natural, expected and usual responses to changes which will have a cascading effect on everyone and everything. However, in keeping with the spirit of the times of renewal, the new legislated laws ought to be leveraged for all the potential positive changes and illuminating effects that these can bring forth. Instead of giving way to cognitive dissonance and tendency to fortify against changes; the spirit of the time is placing a demand on veritable engagement with these new legislations. When crimes are committed and brought to justice, these are not just crimes against an individual, but are transgressions against the entire Society, which is represented through the State. The new Laws will go a long way to pave way for a robust prosecution, striking balance between the State (society at large), victim as well as the accused. It will give more teeth to deterrence, justice as also the process of justice.

8.1 *BNSS, in terms of Section 1(3) thereof, has come into force w.e.f. 01.07.2024 vide notification dated 23.02.2024. The immediate consequence, that flows from this is, that not only BNSS becomes the applicable criminal procedural law but also that the earlier criminal procedural law namely Cr.P.C., 1973 immediately stands repealed. A bare perusal of Section 1(3) of BNSS read alongwith Section 531 of BNSS inevitably leads to this conclusion. In the considered opinion of this Court, this aspect of the matter is beyond any shadow of doubt. In other words, the earlier procedural statute namely Cr.P.C., 1973 is wiped off the statute book and resultantly pales into insignificance except to the extent it is preserved by the repealing and savings clause contained in Section 531 of BNSS. A critical analysis of Section 531 of BNSS shows that only the appeal/application/trial/inquiry/investigation pending up to 30.06.2024 shall not be affected by the repealing of Cr.P.C., 1973 & such proceedings would be adjudicated upon in terms of the provisions of Cr.P.C., 1973 itself. Any appeal/application/trial/inquiry/investigation instituted on or after 01.07.2024 has to be essentially adjudicated upon in*



terms of the provisions of BNSS. This aspect of the matter is fortified by bare perusal of Section 4 of BNSS which clearly stipulates that all offences under BNS shall be investigated into/ inquired into/tried and otherwise dealt with according to the provisions of BNSS. The provision as contained in Sub-Section (2) of Section 4 of BNSS further clarifies that all offences under “any other law” shall also be investigated into/inquired into/tried and otherwise dealt with according to the “same provisions”. The words “same provisions” essentially mean provisions of BNSS as referred to in sub-section 1 of Section 4 of BNSS. In other words, for offences committed under special penal statutes/laws, other than the BNS, the procedural law shall be BNSS w.e.f. 01.07.2024 subject to any specific enactment for the time being in force dealing with offences under special statutes.

8.2. *The Criminal Procedural law was firstly codified by way of enactment of Code of Criminal Procedure, 1898. The same was amended, extensively, by enacting The Code of Criminal Procedure, 1973. Section 4 of BNSS is, in essence, similar to Section 4 of Cr.P.C., 1973. Further, Section 531 of BNSS is, in essence, similar to Section 484 of Cr.P.C., 1973. Ergo, it would be indubitably profitable to refer to the case-law relating to effect of procedural law changes brought forth by enactment of Cr.P.C., 1973 in place of Cr.P.C., 1898. A five Judges Bench of Hon’ble Supreme Court in the case of **Sukumar Pyne** (supra) has held that a person accused of the commission of an offence has no vested right in any particular course of procedure. Further, another five Judges Bench of the Hon’ble Supreme Court in case of **Memon Abdul Karim Haji Tayab** (supra) has clearly enunciated the well settled principle of law that amendments to a procedural law apply, in the absence of anything to the contrary, retrospectively in the sense that they apply to all actions after the date they come into force even though the actions may have begun earlier or the claim on which the action may be based is of an anterior date. Further, the provisions of Section 4 and Section 531 of BNSS; when construed in the light of dicta of the judgment of a full Bench of Hon’ble Patna High Court in case of **Ram Beyas Singh** (supra); leads to the inevitable conclusion that intention of legislature is that only pending proceedings should be continued and disposed of in accordance with Cr.P.C., 1973, whereas all the subsequent proceedings, to be initiated after the commencement of BNSS, ought to be governed and disposed of in*



*accordance with the provisions of BNSS. Still further, a Five Judges Bench of Hon'ble Supreme Court in case of **Garikapati Veeraya** (supra) has even held that a right of appeal can also be taken away by a subsequent enactment, if it so provides expressly or by necessary intendment.*

8.3. *Article 20(1) of The Constitution of India stipulates that no person shall be convicted of any offence except for violation of the law in vogue at the time of alleged commission of the offence nor can such a person be imposed upon with a penalty greater than that which might have been inflicted under the law in force at time of commission of offence. It essentially follows from this sacrosanct provision that the prohibition under Article 20 pertains to only conviction/sentence under a law, which has been enacted later on, but not trial thereof. The Hon'ble Supreme Court in its five Judges Bench judgment in the case of **Rao Shiv Bahadur Singh** (supra) has clearly enunciated that a person accused of the commission of an offence has no right nay fundamental right to trial by a particular procedure or in a particular fashion. In other words, Article 20(1) of The Constitution of India does not afford any protection to an accused qua the procedure.*

8.4. *There is no gainsaying that BNSS is essentially a criminal procedural law whereas BNS provides for substantive criminal law. It is trite law that the presumption against a retrospective construction has no application to enactments which affect only the procedure and practice of the Courts, even where the alteration which the statute makes has been disadvantageous to one of the parties. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being, by or for the Court in which he sues, and, if an Act of Parliament alters that mode of procedure, he has no other right than to proceed according to the altered mode. This interpretation draws further credence from perusal of Section 358(2)(b) of BNS which expressly provides that repeal of IPC does not affect any right, privilege, obligation or liability which has been acquired, accrued or incurred under IPC & Section 358(2)(e) of BNS which expressly provides that any proceeding or remedy under IPC is not affected and the same shall be instituted, continued or enforced as if IPC had not been repealed. However, this provision does not have any bearing/effect upon Cr.P.C. in any manner except for the saving(s) provided for under Section 531(2) of BNSS.*



8.5. *This aspect of the matter is further fortified by applying the Golden Rule of Interpretation nay Literal Rule of Interpretation. A five Judges Bench of the Hon'ble Supreme Court in the case of **LVA Dikshitulu** (supra) has held that the cardinal principle of interpretation of statute is that provisions should be construed according to the intent, which is decipherable from the language of the statute. Furthermore, the Hon'ble Supreme Court in the case of **Laxmi Narain Dhut** (supra) has enunciated that the Golden Rule of Interpretation requires giving the words of statute their grammatical and ordinary sense, to convey the legislative intent behind the statute.*

8.6. *The introduction to BNSS and, especially, the statement of Objects and Reasons stated by the legislature behind the BNSS inter alia states that “In view of the above, it is proposed to repeal the Code of Criminal Procedure, 1973 and enact a new law. It provides for the use of technology and forensic sciences in the investigation of crime and furnishing and lodging of information, service of summons, etc., through electronic communication. Specific time-lines have been prescribed for time bound investigation, trial and pronouncement of judgements. Citizen centric approach have been adopted for supply of copy of first information report to the victim and to inform them about the progress of investigation, including by digital means. In cases where punishment is 7 years or more, the victims shall be given an opportunity of being heard before withdrawal of the case by the Government. Summary trial has been made mandatory for petty and less serious cases. The accused persons may be examined through electronic means, like video conferencing. The magisterial system has also been streamlined.” Thus; the provisions of BNSS ought to be considered in light of Heydon's Rule of Interpretation (more commonly known as Mischief Rule of Interpretation); as elucidated upon by the Hon'ble Supreme Court in the cases of **Bengal Immunity Co. Ltd.** (supra) and **RMD Chamarbaugwalla** (supra) to take into account the mischief and defect(s) sought to be eradicated by enactment of BNSS which, in turn, can be well gauged from the statement of objects and reasons given for its enactment.*

8.7. *The statutory mandate contained in BNSS, insofar as Section 4 and Section 531 thereof are concerned, is explicit and unmistakably clear. The need to refer and rely upon Section 6 of The General Clauses Act, 1897 would arise in a case where there is no contrary intendment in the repealing/saving provision contained in BNSS.*



The key expression to attract the applicability of Section 6 of The General Clauses Act, 1897 is “unless a different attention appears”. It is, hence, to be seen whether there is anything in BNSS indicating the legislative intent so as to put the aforesaid Section 6 of The General Clauses Act, 1897 out of play. In the considered opinion of this Court, Section 531 of BNSS is unequivocal and unambiguous nay crystal clear. Accordingly, once the altered procedural law namely BNSS has been brought in vogue, it would apply to cases initiated under IPC as well from and after the date of its commencement i.e. 01.07.2024 as well as to future proceedings except the pending appeal, application etc. as specifically stated in Section 531(2)(a) of BNSS. This aspect is further bolstered by the non-obstante clause contained in Section 531(2) of BNSS by specifically averring therein the word “notwithstanding”. Further, the legislature has protected the application of The General Clauses Act, 1897 in BNS [(by way of Section 358(4))] but has chosen not to accord similar protection in BNSS while enacting Section 531 thereof. The legislative intent is thus unambiguous and unequivocal.

8.8. *The accused cannot be permitted to take refuge behind Rule of Lenity in view of the lucidness in the legislative intent contained in Section 531 of BNSS. This Rule, is a judicial doctrine, requiring that those ambiguities in a criminal statute relating to prohibition and penalties be resolved in favour of the accused if it is not contrary to legislative intent. The Rule of Lenity; also known as Rule of Strict Construction of a penal statute; in other words, means wherein equivocal word or an ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to resolve, the benefit of doubt should be given to the accused. As ratiocinated hereinabove, there is no ambiguity in the legislative intent contained in Sections 4 and 531 of BNSS & hence there arises no scope for applying Rule of Lenity. Therefore, it can be safely inferred that the plea qua Rule of Lenity is much ado about nothing in the present matter which deals with the procedural law.*

8.9. *There is yet another facet of the matter which craves attention of this Court. Section 531(2)(a) of BNSS postulates that any appeal/application/trial/inquiry/investigation which is pending immediately before the date on which this Sanhita comes into force; the same shall be disposed of, continued, held or made (as the case may be) in accordance with the provisions of Cr.P.C., 1973. However, there is no reference to “revision” in this provision. The Hon’ble Supreme Court;*



*while dealing with the saving provision of Section 484 of Cr.P.C., 1973 (the corresponding provision of Section 531 of BNSS); in the case of **P. Phillip** (supra) has held that the word “application” as used in Section 484 of Cr.P.C., 1973 will include a “revision” as well. Further, relying upon the judgment in the case of **P. Phillip** (supra), a Full Bench of the Patna High Court in the case of **Laddu Lal Sahu** (supra) has held that the word “application” in Section 484 of Cr.P.C., 1973 includes within its sweep a “petition of complaint” as well. As ruminated hereinabove by this Court, the provisions of Section 4 of BNSS and Section 531 of BNSS & Section 4 of Cr.P.C., 1973 and Section 484 of Cr.P.C., 1973 are akin in nature. Hence; the ratio decidendi of these judgments shall apply, in toto, to the provisions of BNSS as well. Judicial notice, can well be taken, of the fact that more often than not; “application” and “petition” are used interchangeably in plea(s) filed by rival parties. For instance, in our High Court, “application” for bail is invariably termed as “petition”. Hence, on the above-said analogy, Section 531 of BNSS would apply to “petition” as well. Therefore, it is inevitable conclusion that “petition of complaint” (ordinarily referred to as complaint before the Magistrate), “revision” and “petition” which are pending before the date on which BNSS came into force i.e. 01.07.2024 shall be disposed of, continued, held or made (as the case may be) in accordance with the provisions of Cr.P.C., 1973. In other words, the provision of Section 531 of BNSS shall apply to “revision”, “petition” as also “petition of complaint” (ordinarily referred to as complaint before the Magistrate) with the same vigour as it is statutorily mandated to apply to “appeal/application/trial/inquiry or investigation” in terms of Section 531 of BNSS.*

9. As a sequel to the above-said rumination, the following principles emerge:

I. The Code of Criminal Procedure, 1973 stands repealed w.e.f. 01.07.2024. Ergo; no new/fresh appeal or application or revision or petition can be filed under Code of Criminal Procedure, 1973 on or after 01.07.2024.

II. The provisions of Section 4 and Section 531 of BNSS, 2023 are mandatory in nature as a result whereof any appeal/application/revision/petition/trial/inquiry or investigation pending before 01.07.2024 are required to be disposed of, continued, held or made (as the case may be) in accordance with the provisions of Code of Criminal Procedure, 1973. In other words; any



appeal/application/revision/petition filed on or after 01.07.2024, is required to be filed/instituted under the provisions of BNSS, 2023.

III. Any appeal/application/revision/petition filed on or after 01.07.2024 under the provisions of Cr.P.C., 1973 is non-maintainable & hence would deserve dismissal/rejection on this score alone. However, any appeal/application/revision/petition filed upto 30.06.2024 under the provisions of Cr.P.C., 1973 is maintainable in law. To clarify; in case any appeal/application/revision/petition is filed upto 30.06.2024 but there is defect (Registry objections, as referred to in common parlance) and such defect is cured/removed on or after 01.07.2024, such appeal/application/revision/petition shall be deemed to have been validly filed/instituted on or after 01.07.2024 and, therefore, would be non-maintainable.

IV. Section 531 of BNSS shall apply to “revision”, “petition” as also “petition of complaint” (ordinarily referred to as complaint before Magistrate) with the same vigour as it is statutorily mandated to apply to “appeal/application/trial/inquiry or investigation” in terms of Section 531 of BNSS.”

7. The petition in hand has been preferred on behalf of the accused under Section 482 of Cr.P.C. for quashing of FIR No. 69 dated 01.10.2023 registered at Police Station Women, District Police Commissionerate Ludhiana under Sections 406/498-A of IPC 1860 as also all the proceedings emanating therefrom. The petition was initially filed on 03.07.2024 whereupon defect(s) were pointed out by the Registry of this Court and thereafter the petition was refiled on 05.07.2024. The petitioner is seeking for quashing of the FIR as also all proceedings emanating therefrom in view of the provision of Section 482 of Cr.P.C., 1973. The Criminal Procedure Code of 1973 stands repealed w.e.f. 01.07.2024. Therefore, the inevitable conclusion is, that the petition in hand is non-maintainable & hence deserves rejection on this score.



Decision

8. The instant petition preferred by the petitioner under Section 482 of Cr.P.C., 1973 is dismissed as being not maintainable. It is, however, clarified that this Court has not adverted to the merits of the petition as the same is not maintainable. It goes without saying that the petitioner shall be at liberty to file an appropriate petition invoking the provisions of BNSS, as and if permissible in law.

(SUMEET GOEL)
JUDGE

July 17, 2024
Ajay

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No