



CRM-M-64358-2024

1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

158

CRM-M-64358-2024

Date of decision: 19.12.2024

Rasida @ Rashida

...Petitioner

V/s

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Ms. Malkiat Kaur, Advocate for
Mr. Mohammad Arshad, Advocate for the petitioner.

SUMEET GOEL, J. (Oral)

1. The present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter to be referred as the 'BNSS, 2023') seeking directions to respondent Nos.3 and 4 to decide the representation dated 22.09.2024 (Annexure P-1) of the petitioner in accordance with the law and register an FIR under the relevant provision of the BNSS, 2023 in view of the judgment passed in case of *Lalita Kumari vs. Govt. of Uttar Pradesh & Ors., (2014) 2 SCC, 1*. Additionally, the petitioner has requested for fair and thorough investigation into the allegations of rape, cruelty, illegal divorce and threats to her life. Further direction has also been sought by the petitioner to provide her adequate security against continuous threats from respondent Nos.5 to 10.

2. The brief facts of the case as narrated in the present petition are that the marriage of the petitioner was solemnized with respondent No.5 on 16.03.2014, as per muslim rites and ceremonies. Initially, the petitioner was treated well by her in-laws. However, after the birth of a girl child, the in-

laws of the petitioner started harassing & taunting her for not having a male

**CRM-M-64358-2024****2**

child. It was further alleged that the husband of the petitioner namely Mohd. Salim (respondent No.5 herein) physically assaulted the petitioner and committed forcible rape upon her. Furthermore in the year 2017, when the husband of the petitioner went to Kuwait, her brother-in-law namely Sohail (respondent No.8 herein) started making inappropriate advances towards the petitioner. On April 04, 2022, when the petitioner was alone at home, respondent No.8 namely Sohail (brother-in-law) forcibly raped her. The petitioner has narrated the same to her mother-in-law and sister-in-law but they pressured her to remain silent. Fearing further harm, the petitioner did not disclose the abuse, which only led to continued harassment by the accused Sohail (brother-in-law). On May 16, 2023, the petitioner again informed her mother-in-law and sister-in-law about the abuse. Instead of offering help and support to the petitioner, they beat the petitioner and falsely accused her. Thereafter, the parents of the petitioner took the petitioner back to their home. However, after a gap of two months, the petitioner returned to her in-laws' house to save her marriage but the harassment continued. On August 29, 2023, the accused namely Sohail again raped the petitioner. It was further submitted that all the accused i.e. respondent Nos.5 to 10 allegedly conspired to kill the petitioner and instigated her husband to do so in order to marry someone else. Fearing for her life, the petitioner fled to her parental home in Sakras. However, on 05.09.2023, the petitioner accompanied by her parents went to Safdarjung Hospital in Delhi after hearing about her father-in-law illness where the petitioner encountered her husband namely Mohd. Salim (respondent No.5 herein) where he pronounced *Talaq* unilaterally in public, pushed the

**CRM-M-64358-2024****3**

petitioner and threatened her. Subsequently, the petitioner submitted representation to the concerned Police authorities on 22.09.2024 (Annexure P-1), seeking legal action against her husband and in-laws for alleged rape, cruelty and conspiracy to harm her. The petitioner had also appealed to the Kuwait Embassy to prevent her husband's departure to avoid evasion of legal consequences (copy whereof is annexed as Annexure P-2 with the instant petition). It was further highlighted by the petitioner that despite her complaints, including a legal notice from her husband dated 23.09.2024 (Annexure P-3) and representation to the SHO (Annexure P-4), no action has been taken against the private respondents which necessitated her to approach this Court.

2.1. Learned counsel for the petitioner has iterated that the private respondents in connivance with other persons are threatening the petitioner and her family members. Learned counsel has further iterated that the Section 173(1) of the BNSS, 2023 mandates that every cognizable offence, including allegations of physical, sexual and emotional abuse, must be recorded by the Officer in charge of the Police Station. Despite the detailed representation dated 22.09.2024 (Annexure P-2) of the petitioner outlining serious offences such as rape, cruelty, domestic violence and threats to life, the authorities have failed to fulfill their statutory obligations. It is further submitted that the forced signing of the Talaqnama and Nikahnama under duress, alongwith the physical and sexual assaults committed by respondent Nos.5 to 10 are cognizable under the BNSS, 2023. Moreover, the learned counsel highlights that the under Section 173(4), if the Officer in charge fails to act, the petitioner has the right to escalate her complaint to the



CRM-M-64358-2024

4

Superintendent of Police, who is statutorily obligated to investigate or direct an investigation upon disclosure of a cognizable offence. Furthermore, despite providing overwhelming evidence to Police, no action has been taken against the private respondents, which raised suspicion about inertia of the police. Learned counsel has further argued that a direction be issued to the Police to provide protection to the petitioner and his family members as they are apprehending immediate danger to their life and liberty at the hands of the private respondents as also to direct the official respondents to comply with their statutory duties. Thus, the petitioner has been constrained to file the instant petition seeking the prayer(s) as indicated hereinabove.

3. I have heard learned counsel for the petitioner and have perused the paper-book.

4. It would be apposite to refer herein to a judgment of this Court passed in **CRM-M-34678-2024** titled as **AXXXX vs. vs. State of Punjab and others**, decided on 31.07.2024; relevant whereof reads as under:-

“11. As a sequel to above rumination, the following postulates of law emerge:

I. An Illaqa/Jurisdictional Magistrate has; by virtue of Sections 173 and 175 of BNSS, 2023; the necessary powers and jurisdiction to grant plea(s) for issuance of direction(s) for registration of an FIR, monitoring of investigation in an FIR, change of investigating officer and prayer(s) of alike nature.

II. Ordinarily, an applicant/complainant ought to approach, in the first instance, the Court of Illaqa/Jurisdictional Magistrate to seek prayer(s) for issuance of direction(s) for registration of an FIR, monitoring of investigation in an FIR as also other prayers of akin nature.

III. In a given case, if the facts/circumstances so warrant, the High Court is well within its jurisdiction to entertain and consider plea(s) seeking registration of an FIR, monitoring of investigation in an FIR, constituting an SIT (Special Investigating Team), change of investigating officer & all such prayer(s) of such kind and nature. However, it would be prudent that an



applicant/complainant, while seeking to invoke the jurisdiction of a High Court under Section 528 of BNSS, 2023 in the first instance seeking prayer(s) of above nature, shows sufficient cause for not having approached the Illaqa/Jurisdictional Magistrate in the first instance.

IV.A High Court, in its inherent jurisdiction under Section 528 of BNSS, 2023 has unbridled, unfettered and plenary powers. The only restriction on exercise of such powers is self-restraint. No inflexible and comprehensive guidelines can conceivably be enumerated governing the exercise of these intrinsic powers by a High Court under Section 528 of BNSS, 2023. There is no gainsaying that the nature, mode and extent of such exercise of powers by a High Court under Section 528 of BNSS, 2023 shall depend upon the judicial discretion exercised by a High Court in the facts and circumstances of a given case.”

5. The prime prayer made in the petition is that despite clear evidence of serious offences, including sexual assault, cruelty and fraudulent coercion, the Police have failed to register an FIR and take appropriate legal action against the private respondents. The petitioner (herein) who claims herself to be a victim of beatings, sexual assault etc. has chosen to invoke the inherent jurisdiction of this Court under Section 528 of BNSS, 2023 without even referring to, much less disclosing any impediment being faced by her in approaching the concerned Illaqa/Jurisdictional Magistrate by invoking Section 175 of BNSS, 2023. In the considered opinion of this Court, the petitioner ought to have approached the concerned Illaqa/Jurisdictional Magistrate in the first instance who is well empowered to grant the substantial relief(s) sought for in the present petition. No such accentuating facts/circumstances have been brought forward by the petitioner which may warrant interference by this Court under Section 528 of BNSS, 2023. Accordingly, this Court does not find the present case a fit one for exercise of its jurisdiction under Section 528 of BNSS, 2023.



CRM-M-64358-2024

6

6. The prayer that next requires to be addressed is to provide protection to the petitioner and her family members as they are apprehending danger to their life and liberty at the hands of private respondents. In the considered opinion of this Court, the allegations of repeated physical assault, severe mental harassment or degrading treatment that endangers the well being of the petitioner are without any cogent and credible evidence to substantiate such claims. The jurisdiction conferred upon this Court under Section 528 of the BNSS is of an extraordinary and discretionary character, necessitating careful and judicious invocation. It is a trite principle of law that such jurisdiction is not to be exercised in routine or perfunctory matters, but solely in circumstances that unequivocally warrant the intervention of the Court to prevent manifest injustice or irreparable harm. The Court, in the exercise of its extraordinary powers, is not a forum for speculative grievances or unsubstantiated apprehensions. Mere averments or generalized prayers, such as those seeking directions for protection, are insufficient to compel the Court to intervene. The petitioner bears a fundamental and onerous obligation to substantiate their allegations with cogent, credible, and prima facie evidence that demonstrates a real and immediate threat or an act of injustice requiring redress. It would be appropriate to refer herein to an age old adage:

“Judicial judgment must be informed and guided by the evidence on record; speculation or surmises has no place in the Court of Law”

It is well-settled that the extraordinary jurisdiction of the Court is intended to supplement, not supplant, the ordinary remedies available under the general law. This jurisdiction is inherently constrained by the principles of judicial propriety and is invoked only where there exists no



efficacious alternative remedy, or where failure to act would result in the miscarriage of justice. Absent sufficient material or evidentiary basis, the Court cannot be compelled to act merely on the asking of a petitioner. To do so would undermine the very sanctity and purpose of its extraordinary jurisdiction, reducing it to a mechanism for frivolous or unwarranted claims. In the present instance, the lack of substantive evidence negates any justification for the exercise of such powers, and the Court finds no occasion to intervene in the absence of a clear and compelling case.

7. Accordingly, the instant petition filed under Section 528 of BNSS, 2023 stands dismissed. Needless to state herein that this Court has not delved into the merits of the matter and the same is left open to be considered in appropriate proceedings, if so initiated. There is no gainsaying that the petitioner, if so advised, will be at liberty to file an appropriate petition, *inter alia*, under Section 175 of BNSS, 2023 for redressal of her grievance(s), in accordance with law.

8. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

December 19, 2024
Ajay

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