

20.04.2026
Item no.94.
Court No.5.
KAUSHIK/
Suman

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Criminal Miscellaneous Jurisdiction**

CRR 440 of 2025

In the matter of : Gaganpreet Kaur

.....Petitioner.

Mr. Anand Keshari
Mr. Sanjeev Kumar Gupta
Ms. Nivedita Lama
.....for the Petitioner.

Mr. Nilay Chakraborty, Ld. APP
Mr. Tapan Bhattacharjee
.....for the State.

Despite service, the Opposite Party No. 2 is unrepresented.

This application has been filed under Section 528 of the BNSS, corresponding to Section 482 of the Code of Criminal Procedure, 1973, seeking quashing of the charge-sheet bearing No. 707 of 2024 dated 31st August, 2024, submitted in connection with New Jalpaiguri Police Station Case No. 706 of 2024 dated 19.07.2024, under Sections 126(2), 115(2), and 351(2) of the BNSS.

Mr. Keshari, learned advocate appearing for the petitioner, submits that, following the alleged incident at the sawmill owned by the petitioner, a complaint has been lodged making frivolous allegations against him. He contends that the petitioner, being the owner of the sawmill where the incident is alleged to have occurred, cannot be prosecuted under Section 126(2) of the BNSS for the offence of wrongful restraint within her own premises.

He further submits that the provisions of Section 126(2) of the BNSS have been invoked solely to impart a cognizable character to the case, whereas in fact the allegations disclose, at best, a non-cognizable offence. Referring to Section 2(h) of the BNSS, he contends that where a police report, upon investigation, reveals the commission of a non-cognizable offence, the same is to be treated as a complaint, and the police officer submitting such report is to be deemed the complainant.

He submits that there is no material to invoke Section 126(2) of the BNSS and, therefore, the charge-sheet ought to be treated as a complaint, in which event the proceedings would have to follow a different course. He contends that the allegations do not satisfy the essential ingredients of the provisions under which the charge-sheet has been submitted and, accordingly, the charge-sheet is liable to be quashed.

Mr. Banerjee, learned advocate appearing for the State along with Mr. Chakraborty, learned APP, submits that the incident occurred at a sawmill owned by the present petitioner. He submits that the sawmill is a place of business to which members of the public may have access for purchasing and loading wood into their vehicles. He contends that the offence of wrongful restraint can be committed even by the owner within such premises.

He submits that there are sufficient materials against the petitioner to proceed with the case and, on the basis of such materials, a charge-sheet has been submitted against the present petitioner. He further submits that the statements of the eyewitnesses recorded in the course of investigation support the prosecution case. He also submits that the Manager of the sawmill has supported the prosecution case and, as such, it would be inappropriate to quash the proceedings at the threshold.

Heard the learned advocates appearing for the respective parties and perused the materials on record including the charge-sheet and case diary.

Admittedly, in exercise of its inherent powers, the Court may quash a criminal proceeding as well as a charge-sheet. However, it is well settled that such power is to be exercised sparingly, with circumspection, and not in a routine manner. In support of this proposition, a useful reference may be made to the decision reported in *(1992) Supp (1) SCC 335 (State of Haryana v. Bhajan Lal)*.

The power under Section 528 of the BNSS, corresponding to Section 482 of the Code of Criminal Procedure, to quash proceedings may be exercised where it appears that the institution or continuation of a criminal proceeding would amount to an abuse of the process of the Court. Broadly speaking, criminal proceedings ought not to be permitted to continue where they are manifestly attended with mala fide intention, or where their continuation would result in abuse of the process of the Court, or where quashing is necessary to secure the ends of justice. Such power may also be exercised where there exists a legal bar to the institution or continuation of the proceedings, or where sanction from the competent authority is mandatory but has not been obtained.

It may also arise that the allegations levelled against a particular accused do not constitute the offence alleged, or that there is no legal evidence on record to support the prosecution case. Where it is contended that the allegations do not disclose any offence, the Court is not required to examine their veracity; rather, the Court must proceed on the basis that the allegations are true and determine whether, on their face value, they disclose the commission of any offence.

There is a clear distinction between cases where there is no legal evidence at all and cases where some evidence exists but may not be consistent with the prosecution's case. However, in such matters, the Court ordinarily does not embark upon an enquiry into the reliability or sufficiency of the evidence.

Thus, in light of the foregoing discussion, it may be concluded that, upon a careful perusal of the materials on record, the Court exercises its power under Section 528 of the BNSS with great caution. While doing so, the Court must consider whether, even if the allegations in the FIR are taken to be true at their face value, they disclose the commission of the alleged offence.

In the present case, it is not in dispute that the alleged offence occurred within the premises of a sawmill owned by the petitioner. The place of occurrence is a commercial establishment to which members of the public have access for the purpose of purchasing and loading timber into their vehicles. In such circumstances, it cannot be concluded that merely because the petitioner is the owner of the sawmill, no case under Section 126(2) of the BNSS, corresponding to Section 341 of the Indian Penal Code, can be initiated or continued against her. The mere fact that the petitioner is the owner of the sawmill where the alleged incident occurred does not, by itself, rule out the applicability of Section 126(2) BNSS/Section 341 IPC. Such an assertion cannot be accepted. As noted earlier, the Court, while exercising jurisdiction under Section 528 BNSS, is not required to examine the reliability or veracity of the allegations at this stage. Therefore, the charge-sheet cannot be quashed on the ground that continuation of the criminal proceedings would amount to an abuse of the process of law.

In that view of the matter, I do not find any adequate justification to accept the petitioner's prayer for quashing the charge-sheet.

Accordingly, the revisional application is, thus, **dismissed**.

However, it is clarified that the petitioner shall be at liberty to raise all the issues, as argued before me, before the learned court below in accordance with law.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Partha Sarathi Chatterjee, J.)