IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.MMO No.1015 of 2026
Reserved on 29.10.2026
Decided on 03.11.2026
Uploaded on : 03.11.2026

Jitender Kumar and Ors. ...Petitioners

Versus

State of H.P. & Ors. .....Respondents

Coram:

The Hon'ble Mr. Justice Chirag Bhanu Singh, Judge.

Whether approved for reporting? Yes [1]

For the Petitioners : Mr. Divya Raj Singh, Advocate.

For the Respondents : Mr. Rajpal Thakur, Additional Advocate General, for respondent No.1.

Mr. Anurag, Advocate, for respondents No.2 and 3.

Chirag Bhanu Singh, Judge

The petitioners have invoked the inherent powers of this Court, under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the 'BNSS'), for quashing FIR No.59 of 2024, dated 03.12.2024, registered under Sections 65(1) of Bharatiya Nyaya Sanhita (hereinafter referred to as the BNS), Sections 363, 366 of the Indian Penal Code (hereinafter referred to as the 'IPC') and Sections 6, 21 of

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[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the POCSO Act), at Women Police Station, District Chamba, H.P., on the basis of the compromise effected inter se the parties.

2. Briefly, stated the facts of the case, as emerging on the record are that on 03.12.2024 the complainant-Kapil Dev Sharma, (Coordinator of the Child Welfare Helpline) had informed the police that one minor girl had been brought to the hospital at Chamba for delivery. The father of the minor Tej Singh had also met the complainant. On inquiry, it was disclosed to the complainant that his minor daughter was residing with one Jitender Kumar (petitioner No.1) and his mother had telephonically informed the father of Jitender Kumar that the minor was in pain and had to be rushed for delivery to the hospital. The families of both the minor and petitioner No.1- Jitender Kumar had reached the hospital at Tissa from where she had been referred to Chamba.

3. Based on the aforesaid information, the aforesaid FIR had come to be registered. The petitioners have approached this Court alleging that the minor victim was the legally wedded wife of the petitioner No.1-Jitender Kumar. The

victim was in fact a minor and had solemnized marriage with the petitioner No.1-Jitender Kumar of her own volition and that too with the concurrence of their parents. Since then, she had been residing with petitioner No.1, as his wife. Thereafter, she had conceived and had been rushed to the hospital for delivering the child. The attending doctor assuming that the victim was less then 18 years old girl had informed the police hence, the present FIR.

4. It is further averred by the petitioners that even at the time of registration of the FIR, the victim was not a minor. Even after the birth of the newly born, all the petitioners and the victim are residing together. Even in her statement recorded under Section 164 of Cr.P.C., the victim had got her age recorded as 17 years. Even while appearing as PW-1, the victim has stated her date of birth as 23.06.2005.

5. The parties have of their own volition entered into a compromise placed on record as Annexure P-3. They are not only married, but do not want to carry on with the case. It may rather result into un-pleasantness and the breakdown of their marriage.

6. Besides the aforesaid averments, the petitioner No.1-Jitender Kumar and the victim had appeared in this Court on 15.10.2026. The petitioner No.1-Jitender Kumar had categorically deposed that he had married the victim in the year 2024. On 03.12.2024 she had gone to the Civil Hospital Chamba for the delivery of her child and the aforesaid FIR came to be registered against him, his father, his mother and his sister. Nonetheless he has again entered into a compromise with the victim voluntarily. So is the statement of the victim, who has also categorically deposed that she had married the petitioner No.1-Jitender Kumar in the year 2024. A daughter had been born to them in December, 2024. She had been residing with her husband since their marriage. On 03.12.2024, she had gone to the hospital to deliver a child and during the course of delivery, the aforesaid FIR came to be registered against her husband and her in-laws. She has entered into a compromise and does not wish to pursue the FIR any further.

7. Having heard the learned counsel appearing for the parties and after having gone through the statements of the purported victim and the petitioner, the important question

which arises for consideration is whether the FIR in question can be quashed more particularly, keeping in view the caveat that while exercising the inherent powers under Section 528 of the BNSS, (Section 482 of Cr.P.C.), though this Court can indeed quash the proceedings, but having due regard to the nature and gravity of the crime and its impact on the society at large. Generally, heinous offences of mental depravity, murder, rape, dacoity etc. may not come within the purview of the same. In that sense only offences arising from commercial, financial, mercantile and civil partnership, matrimonial or family disputes, where the wrong is basically private or personal in nature may be given a quietus, exercising such powers.

8. However, the proceedings can still be quashed by this Court while exercising powers under Section 528 of BNSS, if it tantamounts to the abuse of the process of law. The aforesaid proposition already stand answer by the Hon'ble Supreme Court in no uncertain terms in ***Gian Singh versus State of Punjab & Anr. (2012) 10 SCC 303.***

9. No doubt, the offence alleged in the present FIR, falls in the category of heinous crimes, as the FIR stands registered

under Section 65(1) of the BNS, Sections 363, 366 of the IPC and Sections 6, 21 of the POCSO Act, but strangely what has emerged on record is that the victim had purportedly married the petitioner No.1/accused in the year 2024 itself. Not only had they solemnized marriage, which was also in the knowledge of the families of the two, but the victim has also delivered a baby. The victim as per her own deposition has categorically stated that she has been residing with the petitioner No.1/accused since their marriage and on 03.12.2024 she had gone to the hospital to deliver a child.

10. Undisputedly, both the victim/prosecutrix and the petitioner No.1/accused-Jitender Kumar are married. They have also been blessed with a child. As per the statement of the doctor, the victim was found to be a minor though she has herself stated her date of birth as 23.06.2005. Even in her statement recorded under Section 164 of Cr.P.C., the victim had got her age recorded as 17 years.

11. Seemingly, the FIR came to be registered mainly on the basis of a report submitted by the doctor. Even assuming that the accused had married a minor it at best entailed action against him only under the provisions of The Prohibition of

Child Marriage Act, 2006. However, under what circumstances the POCSO Act came to be attracted is hard to fathom. The doctor had only reported that the prosecutrix, who was less than 17 years of age had delivered a baby boy. The bare perusal of the report filed by the doctor does not remotely suggest that an offense under the POCSO Act had been reported by the doctor or the prosecutrix had disclosed anything about such an offence having been committed by petitioner or someone else against her.

12. Nonetheless, apparently keeping in view the provisions of Sections 19 and 21 of the POCSO Act, the doctor had reported the matter that the victim, who had come to deliver a child was below 18 years. He just informed the police. It apparently resulted in the registration of the present FIR.

13. No doubt Section 19 of the POCSO Act, *inter alia*, provides that an offense committed under this Act shall be informed to the Special Juvenile Police Unit or the local police, and any person, who fails to report the commission of an offense under Sub-section (1) of Section 19 has been held liable for punishment, but that in any eventuality, would not mean

that a person, who has come to deliver a child, if she happens to be a minor, would in itself constitute an offense at least under the POCSO Act.

14. It would be apposite to reproduce Section 19 of the Act, which reads thus;

> ***"19.Reporting of offences.—(1)Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to,—***
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> ***(a)the Special Juvenile Police Unit; or***
>
> ***(b)the local police.***
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> ***(2)Every report given under sub-section (1) shall be—***
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> ***(a)ascribed an entry number and recorded in writing;***
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> ***(b)be read over to the informant;***
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> ***(c)shall be entered in a book to be kept by the Police Unit.***
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> ***(3)Where the report under sub-section (1) is given by a child, the same shall be recorded under sub¬section (2) in a simple language so that the child understands contents being recorded.***
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> ***(4)In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.***
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> ***(5)Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection including admitting the child into shelter home or to the nearest hospital within twenty-four hours of the report, as may be prescribed.***

> ***(6)The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.***
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> ***(7)No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1).”***

15. The bare reading of the Section would suggest that what has to be reported is the apprehension of an offence or an offence having been committed under the Act, or a person, who had knowledge that such an offence has been committed under the Act. Sub-section (3) of Section 19 clearly provides that where a report under Sub-section (1) is given by a child, the same shall be recorded under Sub-section (2) in a simple language, so that even the child understands the content of the same.

16. It is thus crystal clear that non-reporting would become an offense only if a sexual assault in any form if reported by the child and despite reporting an assault, if the doctor or any other person, who has knowledge of the same fails to inform the police, would result in the invocation of the provisions of Sections 19 and 21 of the Act. The legislature never intended it to mean that a minor, who has gone to deliver a child, should he charged under the provisions of the POCSO Act.

17. It would be a travesty of justice if a person who has gone to get his child delivered is arrested for an offence under POCSO, even if his wife is a minor. It could not have been the intention of the legislature, and nor it is. Section 19 of the POCSO itself suggests that the victim has to report a sexual offence and it is only if reported and the doctor or the person informed does not respond, the provisions of Section 19 come into play. Even in the case at hand, the alleged victim (the wife) of the accused had not reported any offence under the Act to the doctor. The doctor's thus reporting to the police that a minor had been admitted for delivering a child, could not have *per se* attracted the provisions of the POCSO Act. At best the accused husband could have been prosecuted under the provisions of The Prohibition of Child Marriage Act, 2006. Section 9 of the said Act providing the penal consequences thereof.

18. The intent and the purpose behind Section 19 of the POCSO Act only is that the sexual offences against minors don't go unreported.

19. The distinction can be gauged from the provisions of Section 19 itself. The bare reading of sub-clause (1) to (3) clearly demonstrates that it is only when a sexual assault on a minor goes unreported, that Section 19 comes into play. It is not meant for a situation where a married minor has gone to deliver a child. At best,

in the aforesaid circumstances only the provisions of, The Prohibition of Child Marriage Act, 2006, could have been invoked by the police. The report under Section 19 has also to be given by the child and recorded thereupon before initiating any action by the police. In the case at hand, the report has been made by the doctor and the Counsellor of the child helpline and not the child.

20. Unfortunately, after the filing of the charge sheet, if any change of circumstance is to be reported the learned trial Courts do not take cognizance of it at the stage of framing of charges and resultantly the High Courts are flooded with the petition under Section 528 of BNSS (Section 482 of Cr.P.C.), oblivious of the fact that there are sufficient powers with the learned trial Courts to take cognizance of such change in circumstances at different stages including at the stage of framing of charges. In these peculiar circumstances even if a wife appears before the learned trial Court after framing of charges and deposes that she happens to be the married wife of the accused the learned trial Courts can and should close the trial holding the same to be a case of no evidence, exercising powers under Section 232 of Cr.P.C. (Section 255 of BNSS).

21. For Section 232 acts as a statutory filter in session trials to end a case prematurely when the prosecution completely fails to

bring on record any incriminating evidence, sparing the accused not only from proving an unnecessary defence, but also to avoid unnecessary harassment to the accused by calling upon him to produce evidence and to avoid waste of public time and of course the time of the Courts. Illustratively if the wife of the accused appears before the Court and deposes clearly and categorically, it would indeed be a case of "no evidence" and the trial Courts would be well within their right to acquit the accused even after merely recording the testimony of the wife. Seeing to the huge influx of cases seeking quashment of FIRs under Section 528 of the BNSS (Section 482 of Cr.P.C), time has come that the learned trial Courts start taking cognizance of such changed circumstances either at the time of framing charges or even by proactively calling for the evidence of the prosecution and examining the prosecutrix i.e. the wife and exercising powers under Section 232 (now 255 of BNSS) acquitting the accused. The object of Section 232 even otherwise is not only to expedite the conclusion of the trial but at the same time avoid unnecessary harassment to the accused. If the trial Court could take cognizance of such changed circumstances, the accused would not have to rush to the High Courts for exercising their inherent powers under Section 528 of BNSS.

22. Nonetheless without adverting any further on the said aspect suffice it to say that it is a fit case to exercise the powers of Section 528 of the BNSS and quashing the FIR. The victim while appearing as her own witness as PW-1, has herself demolished the very basis of the prosecution case. Therefore, there are no chances of conviction of the petitioners. As such, even otherwise no fruitful purpose would be served in case the FIR as well as consequent proceedings are allowed to continue. It would otherwise be a travesty of justice in case the petitioner is made to go through the agony of trial that too for allegedly having sexually ravished his own wife.

23. This Court would thus be well within its jurisdiction to quash the criminal proceedings against the petitioners/accuseds. As a sequel FIR No.59 of 2024, dated 03.12.2024, registered under Section 65(1) of BNS, Sections 363, 366 of IPC and Sections 6, 21 of the POCSO Act, at Women Police Station Chamba, District Chamba, H.P., and all the consequent proceedings arising out of the said FIR are quashed and set-aside. Ordered accordingly.

24. The petition is disposed of in the aforesaid terms, pending application(s), if any also stands disposed of.

(Chirag Bhanu Singh)
Judge

November 03, 2026
(subhash sharma)