2026:AHC:210983

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 29087 of 2025

Mahendra Rajbhar

.....Applicant(s)

Versus

State Of U.P. And 3 Others

.....Opposite Party(s)

Counsel for Applicant(s)	:	Rajkumar Verma
Counsel for Opposite Party(s)	:	G.A.

Court No. - 73

HON'BLE DR. GAUTAM CHOWDHARY, J.

1. The present application under Section 528 of BNSS has been filed for quashing the entire proceedings of Special Sessions Trial No.207 of 2020 (State Vs. Mahendra Rajbhar) arising out of Case Crime No. 152 of 2019 under Sections 363, 366, 506 I.P.C., and Section 7/8 of POCSO Act, Police Station Jasa, District Varanasi pending before learned Additional District and Sessions Judge/Special Judge, POCSO Act, Court No.3, District Varanasi as well as to quash the charge sheet dated 21.01.2020 and also to quash the cognizance order dated 11.09.2023 passed in the aforesaid case.

2. The prosecution story in brief is that the applicant enticed away the daughter of the informant/opposite party no.4 on 03.07.2019. It is also averred that her date of birth is 30.08.2002. Upon aforesaid averments, a first information report was lodged in Case Crime No. 0152 of 2019 under Sections 363, 366, 506 I.P.C., and Section 7/8 of POCSO Act, Police Station Jasa, District Varanasi. The matter was entrusted for investigation and the Investigating Officer after collecting oral as well as documentary evidence submitted charge sheet dated 21.01.2020 upon which, cognizance has been taken vide order dated 11.09.2023 and the case has been registered as Special Sessions Trial No. 207 of 2020 (State Vs. Mahendra Rajbhar) arising out of Case Crime No. 152 of 2019 under Sections 363, 366, 506 I.P.C., and Section 7/8 of POCSO Act, Police Station Jasa, District Varanasi. The proceedings arising out of charge sheet dated 21.01.2020 are under challenge before this Court.

3. Learned counsel for the applicant has contended that the incident is

alleged to have occurred on 03.07.2019 and that the F.I.R. was also lodged on the same day. He further submits that the date of birth as described in the F.I.R. is 30.08.2002 and that the victim was aged about 16 years 11 months alleging her as minor when as a matter of fact, she was major. Learned counsel further argued that in fact the victim was major on the day of the incident but her date of birth has been recorded on the lessor side because it is tendency of many parents to record lesser age in school is well known. He placed reliance upon the judgment of Hon'ble Apex Court in the matter of ***Daya Chand Vs. Sahib Singh***, reported in *AIR 1991 SC 930,* in support of his contention. Learned counsel further argued that the victim in her statement recorded under Section 164 Cr.P.C. has stated that her step mother used to beat and abuse her frequently on account of which, she alone had gone to her maternal uncle's house and nobody had enticed her away and that her father brought her back from his house. Learned counsel thus argued that no offence under the charged Sections is made out against the applicant. Apart from the said submissions, learned counsel also argued that the victim out of her love and affection had solemnised marriage on 29.06.2019 and their marriage has also been registered before the Marriage Registration Officer, Sadar First, District Varanasi on 01.07.2019, copy of which, is at page no. 43 of the paper book. Learned counsel next argued that the victim after solemnisation of marriage with the applicant started residing at her matrimonial house and is performing all her matrimonial obligations towards the applicant and his family member. Learned counsel further argued that out of the said wedlock two children has also born and in this regard, birth certificate has been issued, copy of which is annexed as Annexcure-10 to the affidavit accompanying the application. Learned counsel has further submitted that the Hon'ble Apex Court in the matter of **Fazle Gaffar Khan and others Vs. State of W.B. and another** reported in **2000 (10) SCC (10)** has held in paragraph no.3 as under:-

> "3. The appellant faces criminal proceedings on a charge under Section 366 I.P.C. on the allegation that he kidnapped a minor. On the basis of the first information report (F.I.R.) the police took up the investigation and submitted a final form. A protest petition being filed by the complainant, the Magistrate treated it as a complaint and took cognizance. The accused moved the High Court under Section 482 Cr.P.C. for quashing of the proceedings. The High Court having refused to quash the proceedings, the present appeal has been filed in this Court. An affidavit of the girl has been filed clearly stating therein that she was married to the appellant-

> accused. In the light of the said affidavit of the girl admitting the marriage between her and the present appellant and the statement made by Ms. Indira Jaisingh, learned Senior Counsel appearing for the appellant that a child has been born, we think it in the interest of justice to quash the criminal proceedings. We, therefore, allow this appeal and direct that the criminal proceedings be quashed."

4. Perusal of the record shows that in the instant application notice was issued to the opposite party no.4 however no one has put in appearance before this Court. The victim in her statements recorded under Sections 161 and 164 Cr.P.C. has specifically stated that she has gone to her maternal uncle's house and that there is no whisper about the enticement of the victim by the applicant. Though the victim has solemnised marriage with the applicant. Thereafter, the marriage has been registered, copy of the marriage registration certificate is annexed as Annexure-7 to the affidavit accompanying the application. The victim after solemnisation of marriage started living with the applicant at her matrimonial house. Out of said wedlock, two children have born, which is evident from the perusal of birth certificate of the children, copy of which is annexed as Annexure-6 to the affidavit accompanying the application. Furthermore, the proceedings are of the year 2020 and that the averments made in the instant application is unrebutted even by the State. Therefore, in exercise of powers conferred under Section 528 of BNSS as well as following the Judgement of ***Fazle Gaffar (supra)*** this Court is of the opinion that the proceedings under challenge before this Court is liable to be quashed.

5. Accordingly, the entire proceedings of Special Sessions Trial No.207 of 2020 (State Vs. Mahendra Rajbhar) arising out of Case Crime No. 152 of 2019 under Sections 363, 366, 506 I.P.C., and Section 7/8 of POCSO Act, Police Station Jasa, District Varanasi pending before learned Additional District and Sessions Judge/Special Judge, POCSO Act, Court No.3, District Varanasi as well as charge sheet dated 21.01.2020 and also the cognizance order dated 11.09.2023 passed in the aforesaid case, is quashed.

6. The present application is allowed.

(Dr. Gautam Chowdhary,J.)

October 7, 2026
S.Ali

Digitally signed by :-
SHAUKAT ALI
High Court of Judicature at Allahabad