

Abhinav Kumar vs State Of U.P. And Another on 28 February, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 77

Case :- APPLICATION U/S 482 No. - 32747 of 2024

Applicant :- Abhinav Kumar

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Shakti Shanker Tiwari, Subhash Chandra Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard Sri Subhash Chandra Tiwari, learned counsel for the applicant and Sri Ramesh Kumar, learned A.G.A. for the State.
2. The present 482 Cr.P.C. application has been filed to quash the summoning order dated 15.4.2024 and stay the further proceeding of the complaint case No. 4690 of 2023, u/s 406 IPC, P.S. Govind Nagar, District Kanpur Nagar.
3. From perusal of the report of stamp reporter, it appears that present application filed u/s 482 Cr.P.C. was presented before the Registry on 21.9.2024. The Division Bench of this court in Criminal Misc. Writ Petition No.12287 of 2024 (Deepu & 4 Others Vs. State of U.P. & 3 Others) vide order dated 06.08.2024 has observed that all the applications filed u/s 482 Cr.P.C. after 01.07.2024 are not maintainable as the Cr.P.C. has been repealed and New Act i.e. BNSS has been enforced on 01.07.2024 and the proceedings or orders of District Courts subsequent to 01.07.2024 could be challenged only u/s 528 of BNSS. Paragraph no.16 of Deepu's case (supra) is being quoted as under:

"16. On the basis of above analysis, this Court is also summarising the law regarding effect of repealing the IPC and Cr.P.C. by BNS and BNSS respectively and same is being mentioned as below:

(i) If an FIR is registered on or after 1.7.2024 for the offence committed prior to 1.7.2024, then FIR would be registered under the provisions of IPC but the investigation will continue as per BNSS.

(ii) In the pending investigation on 01.07.2024 (on the date of commencement of New Criminal Laws), investigation will continue as per the Cr.P.C. till the cognizance is taken on the police report and if any direction is made for further investigation by the competent Court then same will continue as per the Cr.P.C.

(iii) The cognizance on the pending investigation on or after 01.07.2024 would be taken as per the BNSS and all the subsequent proceeding including enquiry, trial or appeal would be conducted as per the procedure of BNSS.

(iv) Section 531(2)(a) of BNSS saved only pending investigation, trial, appeal, application and enquiry, therefore, if any trial, appeal, revision or application is commenced after 01.07.2024, the same will be proceeded as per the procedure of BNSS.

(v) The pending trial on 01.07.2024, if concluded on or after 01.07.2024 then appeal or revision against the judgement passed in such a trial will be as per the BNSS. However, if any application is filed in appeal, which was pending on 01.07.2024 then the procedure of Cr.P.C. will apply.

(vi) If the criminal proceeding or chargesheet is challenged before the High Court on or after 01.07.2024, where the investigation was conducted as per Cr.P.C. then same will be filed u/s 528 of BNSS not u/s 482 Cr.P.C."

4. Thereafter, Stamp Reporter submitted a note dated 20.08.2024 before the Hon'ble Committee for implementation of New Criminal Law, High Court, Allahabad for seeking guidance for implementation of directions of judgement of Deepu's case (supra) regarding New Criminal Laws. The Hon'ble Committee in its resolution dated 22.08.2024 has resolved that Stamp Reporter (Criminal) is directed to comply the order dated 06.08.2024 passed in Deepu's case (supra) with further direction that if any application is filed in deviation with the judgement of Deepu's case (supra) then case shall not be withheld but same shall be placed before the concerned court along with a note.

5. In pursuance of resolution dated 22.08.2024 of the Hon'ble Committee for implementation of New Criminal Laws, Registrar (J)(Criminal) section directed to Stamp Reporter (Criminal) to comply the resolution dated 22.08.2024 of the Hon'ble Committee. Thereafter from 01.09.2024, the Stamp Reporter (Criminal) Section High Court, Allahabad started making a note in applications u/s 482 Cr.P.C. which were filed in deviation of the judgement dated 06.08.2024 passed in Deepu's case (supra).

6. The Hon'ble Committee passed a resolution dated 22.08.2024 for not withholding the applications u/s 482 Cr.P.C. considering the huge backlog of cases presented before the Stamp Reporter (Criminal) for reporting. But that does not mean that Committee has permitted to file application u/s 482 Cr.P.C. in deviation of judgement passed in Deepu's case (supra), even after its resolution dated 22.08.2024 which was communicated to Stamp Reporter (Criminal) on 29.08.2024. Even then the applications u/s 482 Cr.P.C. have been continuously filed, even in the year 2025 taking advantage of the resolution dated 22.08.2024 of the Hon'ble Committee which has resulted the placing of application u/s 528 of BNSS below the application filed u/s 482 Cr.P.C., despite being filed earlier in time.

7. As the present application has been filed after the resolution of the Committee of High Court for implementation of New Criminal Law, therefore, present application u/s 482 Cr.P.C. challenging the impugned proceeding is not maintainable. Accordingly, the same is dismissed with liberty to the applicant to file fresh application u/s 528 of BNSS to challenge the impugned proceeding.

8. Office is directed to return the certified copy of the impugned order(s) to the learned counsel for the applicant, after retaining the photocopy of the same.

Order Date :- 28.2.2025 Vandana