

Akhtar And 2 Others vs State Of U.P. And 3 Others on 18 April, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:57705

Court No. - 73

Case :- APPLICATION U/S 528 BNSS No. - 8502 of 2025

Applicant :- Akhtar And 2 Others

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Harsh Vardhan Shastri, Satya Prakash Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Vikas Budhwar, J.

1. Heard Sri Harsh Vardhan Shastri along with Sri Satya Prakash Shukla, learned counsel for the applicants as well as Sri Jai Bahadur Singh, learned AGA for the State and Sri Vinod Singh for the opposite party no. 2.

2. A joint statement has been made by the learned counsel for the parties that they do not propose to file any affidavits and the application be decided on the basis of the documents available on record. With the consent of the parties, the application is being decided at the fresh stage.

3. The case of the applicants is that a first information report was lodged by the first informant/complainant on 02.09.2023, FIR No. 0112 before the Police Station Kaimri, District Rampur under Section 354B, 376, 511, 323 IPC relating to the commission of offences by the applicants no. 1 and 2 who were named in the first information report as accused and two other unknown persons one of them being applicant no. 3 with an allegation that the grand daughter of

the first informant, victim is aged about 17 years of a minor girl and since the birth of the victim his father Mukhtyar left his daughter and wife and thereafter, the victim is residing with the first informant/complainant who happens to be the maternal grand mother and she is brought up by her. Allegation is that the father of the victim has disowned and further abdicated his responsibility to look after the victim pursuant where to proceedings for maintenance has been initiated by the victim. However, on account of tendering of good offices by some of the villagers including the members of the Panchayat got the matter resolved and sent the victim to her father's place. It is alleged that the uncle of the victim and the brother of the father of the victim being the applicants no. 1, 2 and 3 used to maltreat her and subject the victim to atrocities. The said act was on account of lodging of the proceedings by the victim against her father for maintenance.

4. Further allegation is that on 05.08.2023 at about 10:30 A.M. when the victim was all alone then the applicants no. 1 and 2 who were already present therein along with two unnamed person including applicant no. 3 pounced upon the victim and committed indecent activity being obscene and they tore the clothes which the victim was wearing and threw her on the ground and attempted to commit bad act. When the victim resisted the same, she was beaten. The applicant no. 2 is alleged to have been extended injury with a heavy object on account whereof the victim got in the unconscious state and when hue and cry was raised by the victim then the neighbours came there. The victim narrated the said incident to the villagers who had come to the place of occurrence, however, when the first informant/complainant took the victim to the police station for lodging of the first information report, the same was not lodged and further the victim was also not subjected to medical examination. Allegation is that on account of the said injuries, the victim had developed headache and severe pain. The victim was also taken to medical examination in a district hospital where medical examination was done and she is suffering from the said ailment. A complaint was also lodged on 05.08.2023 a written complaint was also lodged before the S.P., Rampur and also in the Chief Ministers Portal and on 07.08.2023, another letter was written to the Superintendent of Police regarding action not being taken. Thereafter, proceedings under Section 156(3) Cr.P.C. stood lodged entailing lodging of the first information report.

5. Learned counsel for the applicants has submitted that a totally false and incorrect story has been cooked up just in order to falsely implicate the applicants. Submission is that the marriage of the father of the victim being Mukhtyar Ahmad was solemnized with Praveen Jahan on 12.05.2003 according to the Muslim rites and rituals and from the said wedlock the victim was borne. As post five months of the marriage, the victim was born so matrimonial discord stood occasioned and thereafter, the mother of the applicant left the matrimonial home along with the victim. It is submitted that the first informant/complainant is a greedy woman who is the grand mother of the victim and that was the basis for lodging of the criminal proceedings against the applicant. It is also submitted that on 08.07.2009, a Talaknama was reduced in writing according to which the victim is to stay with her mother and the father had no concern about the same, however, proceedings under Section 125 Cr.P.C. stood initiated by the victim against her father. While inviting the attention of the Court towards para 19 of the application, it is further contended that since 2006, the victim is staying with her mother. It is also contended that an injunction suit was also instituted by the victim against her father and the applicants no. 1 and 2 being Original Suit No. 371 of 2013 on 01.07.2023 while claiming ancestral property. It is also alleged that though the first information report was also

lodged under Section 354B, 376, 511, 323, however, thereafter, provisions of Section 7/8 of the POCSO Act were also added. Post lodging of the first information report, statement under Section 161 Cr.P.C. of the victim was recorded wherein allegations were levelled against the applicants no. 1, 2 and 3 regarding attempting to outrage the modesty and beating relatable to the commission of the offences on 05.08.2023 while committing indecent activities, dragging the victim to the floor and attempting to commit bad act. Statement of the first informant/complainant was also recorded narrated the said incident. The victim was put to medical examination. Statement under Section 164 of the victim was also recorded wherein the date mentioned of commission of offence was deposed to be 05.04.2023. A Parcha C.D. No. 11 dated 25.09.2023 came to be issued according to which on the basis of the CDR (call details report) from the cyber section of police station, it was submitted that on 05.08.2023 the applicants were not present in the place of occurrence, statement of the independent witness were also recorded and a final report came to be submitted on 06.10.2023 in favour of the applicants. The final report was not accepted by the circle officer, Milak, District Rampur and he passed an order dated 03.12.2023 rejecting the final report and appointing one Jitendra Kumar as Investigating Officer. The Investigating Officer after investigation, submitted a final report in favour of the applicants on 15.01.2024, the said final report was also not accepted by the circle officer, Milak, District Rampur and he passed an order dated 20.02.2024 directing further investigation for the third time in the light of the statements made under Section 164 Cr.P.C. According to the learned counsel for the applicants, the Investigating Officer conducted investigation and collected CDR and observed that on 05.04.2023, the applicants were not present on the spot that after collecting the CDR the statement of independent witnesses Ajaj Ahmad Saheen was also taken and it disclosed that neither on 05.08.2023 nor on 05.04.2023 there was no occurrence as alleged on both the dates. A final report stood submitted by the Investigating Officer on 25.04.2024. Thereafter, a protest petition came to be filed by the first informant/complainant on 10.09.2024 and post recording of the statement under Section 200 of the complainant/first informant and the statement of the victim under Section 202 and of one Faheem, now the summoning order has been passed on 14.02.2025.

6. Learned counsel for the applicants submits that once three final reports stood submitted showing innocence of the applicants then there was no reason to summon the applicants on filing of the protest petition as there is no iota of evidence against the applicants. Submission is that in the statement under Section 161 Cr.P.C. of the victim, the date of incident is 05.08.2023 but in the statements under Section 164 Cr.P.C., the date of incident has been shown to be 05.04.2023. According to the learned counsel for the applicants, there is a major inconsistency and variation in the statements regarding the date of incident when the offences were committed. Thus, it is submitted that the very basis of the prosecution theory also stands eroded and, thus, there was no question of summoning the applicants in that regard.

7. It is also submitted that the applicants no. 1 and 2 are the uncle of the victim and once the father of the victim is not living with the victim then there is no question of commission of the said offences as there already exists a Talaknama reduced in writing wherein the victim is to stay with her mother that too in the house of the grand mother i.e. first informant/complainant. According to the learned counsel for the applicants there happens to be proceedings under Section 125 of the Cr.P.C. being lodged by the victim against her father and an injunction suit which is also pending

before the court below against applicants no. 1 and 2 and her father.

8. In a nutshell, the submission is that summoning in a criminal proceedings is a serious matter and it cannot be resorted to as a matter of routine as various factors have to be seen and in the present case all the circumstances tilts towards the applicants. Additionally, it has been argued that once CDR depicts that the applicants were not present at the time of the commission of offences then no exception can be drawn. Thus, it is prayed that the entire criminal proceedings and the summoning order be quashed.

9. Countering the submission of the learned counsel for the applicants, Sri Vinod Singh who appears for the opposite party no. 2 has submitted that the order summoning the applicants is perfectly valid in accordance with law and no fault whatsoever can be attributed in that regard. According to him, in a complaint case while summoning the accused there are certain factors which need to be considered that is the complaint as well as the statement under Section 200 and 202 of the Cr.P.C. He submits that, in the present case, the allegations contained in the first information report as well as the statements under Section 200 and 202 cannot be said to be of such a magnitude where there is a major inconsistency or variation. What is to be seen is the fact that the victim is a minor who had been subjected to indecent behaviour and molestation attracting penal consequences that too under Sections 16/17 & 7/8 of the POCSO Act, thus, merely on the basis that there happens to be mention of two days one 05.08.2023 in the statement under Section 161 and 05.04.2023 in the statements under Section 164 would not be a sole ground to throttle the investigation while quashing the proceedings. He also submits that the theory so propounded by the applicants that there happens to be a Talaknama, an agreement wherein the victim is to stay with her mother and there is no obligation upon the father to maintain the victim and institution of suit being alleged to be a factor for lodging of the criminal proceedings is at best a matter of defence which cannot be considered at this stage particularly when the trial has not commenced. Argument is that these are the matters of trial stage whereof has not arisen. Reliance has been placed upon the judgment of the Apex Court in Kamal Prasad Vs. State of Madhya Pradesh (2023) AIR Supreme Court 4979 so as to contend that the question of consideration of the CDR is at the stage when the trial commences as the said plea of alibi cannot be considered at this stage in the present proceedings under Section 482/528 of the Cr.P.C./BNSS.

10. Learned AGA has supported the argument of the opposite party no. 2 and he has nothing to add to except for the fact that there were materials before the court below which occasioned summoning of the applicants.

11. I have heard the learned counsel for the parties and perused the record carefully.

12. In the present case, this Court is confronted with an order summoning the applicants under Section 376/511 IPC read with Section 16/17 & 7/8 of the POCSO Act. In order to test the validity of the summoning order, there are certain principles which need to be considered, one of them is whether there was any material available before the Court while summoning the accused. Apparently, there happens to be a first information report lodged against the applicants no. 1 and 2 and two other unnamed accused including applicant no. 3, under Section 374Kha, 376, 511, 323.

Statements under Section 161 were recorded of the victim wherein pin-pointed allegations were levelled against the applicants regarding attempting to commit bad act and extending injuries relatable to the commission of offences on 05.08.2023. Statement of the first informant/complainant was also recorded which supported the prosecution case. Statements under Section 164 of the Cr.P.c also stood recorded of the victim wherein the date mentioned was commission of offences on 05.04.2023 though pin-pointed allegations are against applicants. Records also reveal that on three occasions, final report was submitted by the Investigating Officer but the same were rejected and they transformed into a complaint case wherein statement under Sections 200 and 202 of Cr.P.C. of the witnesses were recorded. It is also apparent, the case of the applicants that during the investigation, the call detail report were considered which did not indicate the presence of the applicants on the place of incident. Allegation of malicious prosecution has also been levelled against the opposite party no. 2 regarding initiation and the pendency of the proceedings under Section 125 Cr.P.C. lodging of a civil suit and also other factors which motivated implication of the applicants.

13. So far as the summoning of the applicants is concerned, the same is based upon the statement of the witnesses under Section 200 and 202 of Cr.P.C., the statement of the complainant of one independent witness Faheem under Section 202 and of the, they victim do not depict any variance of contradiction with the allegations contained in the complaint. Their statements are clear and specific about commission of offences. Besides the same, in the statement of the victim, once allegations are pin-pointed against the applicants in the commission of the crime then in the facts and circumstances of a given case it would be sufficient to summon the accused. As regards the submission of final reports which are three in number in favour of the applicants is concerned, the same would not be a ground to vitiate the summoning order particularly when the statements under Sections 200 and 202 are in conformity with and in consonance with the allegations contained in the first information report/complaint. With respect to the contention raised by the learned counsel for the applicants that the final report stood submitted on three occasions based upon the call details report showing that the applicants were not present at the place of occurrence on the given time is concerned, the same is also not required to be gone into at the stage of summoning as the same may be a matter of trial which can be considered either for acquittal or conviction at the stage when trial commences and not when only summons have been issued.

14. Much emphasis has been laid upon the fact that there is a major inconsistency in the statement under Section 161 and 164 of the Cr.P.C. of the victim as in the statement under Section 161 the date of incident for commission of offences was 05.08.2023 whereas in Section 164, 05.04.2023, thus, the prosecution theory stood eroded is concerned, the same would also not be relevant particularly at the stage of summoning the accused. Law in this regard is well crystalized that at the time of summoning of the accused a prima facie consideration is to be made as to whether offences are made or not from the allegations contained in the complaint and the statement under Sections 200 and 202 are in conformity and in consonance with the allegations contained in the complaint and once the victim herein has pin-pointed the involvement of the applicant in criminality, thus, the summoning order cannot be said to be bad in the eyes of law. As regards, the theory propounded by the learned counsel for the applicants that there happens to be a divorce between the mother and the father of the victim and proceedings under Section 125 instituted by the victim against her father

and an injunction suit for claiming ancestral property by the victim against the applicants no. 1 and 2 and the father which became the motivating factor for lodging criminal proceedings is concerned, the same at best a defence, stage of consideration whereof has not arrived. Nonetheless, this Court is not required to delve into the said aspects as the same would be pre-empting something particularly when the stage is not arisen.

15. There is another facet of the matter being Section 29 of the Prevention of Children for Sexual Offences Act, 2012, according to which where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections, 3, 5, 7 and 9 of the Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offences, as the case may be, unless the contrary is proved. Thus, there happens to be a statutory presumption against accused. The word 'employed unless the contrary proved' is of relevance which pre-supposes a trial.

16. The Hon'ble Apex Court in M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others, AIR 2021 SC 1918 had the occasion to consider the ambit and the extent of intervention under Article 482 Cr.P.C. wherein it was observed as under:-

"23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article of the Constitution of India, our final conclusions are as under:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;
- ii) Courts would not thwart any investigation into the cognizable offences;
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;
- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;
- vi) Criminal proceedings ought not to be scuttled at the initial stage;
- vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;
- ix) The functions of the judiciary and the police are complementary, not overlapping;
- x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;
- xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;
- xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported.

Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on

merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

17. Here, in the present case, there is nothing to show that there is any exception applicable to the case of the applicants.

18. Cumulatively analysing the case from four corners of law, no good ground is made out for invoking inherent jurisdiction under Section 528 of BNSS for quashing the proceedings that too in absence of pointing out of any jurisdictional infirmity.

19. Resultantly, the application is dismissed.

Order Date :- 18.4.2025 Rajesh