

Aman Kuamr vs State Of U.P. And 3 Others on 22 April, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

Reserved

Neutral Citation No. - 2025:AHC:59440

Court No. - 73

Case :- APPLICATION U/S 528 BNSS No. - 12798 of 2025

Applicant :- Aman Kumar

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

Counsel for Applicant :- Bratendra Singh

Counsel for Opposite Party :- G.A.

Hon'ble Vikas Budhwar,J.

1. Vakalatnama filed on behalf of opposite party no.4 by Sri Arun Kumar is taken on record.
2. Heard Sri Bratendra Singh, learned counsel for the applicant, Sri Jyoti Singh, learned AGA for the State and Sri Arun Kumar, learned counsel for the opposite party no.4.
3. A joint statement has been made by the learned counsel for the parties that they do not propose to file any affidavit 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.

4. The case of the applicant is that the opposite party No. 4 lodged a complaint under Section 156(3) of the Cr.P.C. on 30.5.2024 with the allegation that she is the resident of Kanakpur Sada Police Station, Barnahal, District Mainpuri. On 26.5.2024 at 7 in the evening, when the minor daughter of the opposite party No.4 had gone to answer nature's call in an agriculture field where the corn crop was planted then the applicant along with the other co-accused, who were hiding behind the crop with ill intentions and an order to outrage the modesty of the daughter of the opposite party No. 4, dragged the victim behind the corn crops and committed bad act. On account of hue and cry so made by the victim, one Jawahar Lal and Uday Bhan, who were the residents of the same village, came to the spot and the applicant herein along with another co-accused hurled abuses in Hindi vernacular and threatened that the said matter should not be reported to the police. Allegation is that on account of committing bad act, the victim's clothes were soiled with blood. Attempts were made for getting the matter reported to the police but no complaint or FIR was lodged, a complaint was made to the Superintendent of Police, Mainpuri and since nothing was done, thus the present complaint has been lodged under Section 156(3) of the Cr.P.C.

5. Learned Counsel for the applicant has submitted that on the basis of a false and a fictitious story which has been planted by the opposite party No.4, the magistrate has summoned the applicant and the other co-accused under Section 354 IPC read with Section 7/8 of the Protection of Children from Sexual Offences Act, 2012 (In short 'POCSO') on 20.2.2025.

6. Submission is that the entire allegations have no legs to stand particularly when the victim was not put to medical examination and there is nothing on record to suggest that any bad act was committed by the applicant against the opposite party No. 2. He further submits that even from the deposition of the victim, a statement has been made that the clothes which the victim was wearing at the time when the offence took place had been thrown away. Further submission is that there is no evidence worth consideration to hold the applicant guilty of commission of the offence. It is also submitted that a first information report stood lodged on 9.2.2023 being FIR No.0024 of 2023 under Sections 363, 366, 120 IPC relatable to the commission of the offences on 6.2.2023 and 7.2.2023 against the son of the opposite party No.4 namely, Bittu and one another Vipin Kumar @ Dimple in which a charge sheet stood submitted against the son of the opposite party No.4 under Sections 363, 366, 376-D IPC read with Section 5(G)/6 POCSO Act on 27.4.2023. It is also contended that the son of the opposite party No.4 is in jail and the Criminal Misc. Bail Application No.25395 of 2023, Bittu Vs. State of U.P. which was preferred before this court came to be rejected on 20.5.2024 on the opposition of the applicant which became the basis for lodging of the complaint under Section 156(3) of the Cr.P.C. on 30.5.2024. It is thus contended that the only factor attributable to lodging of the complaint is the FIR lodged by the applicant faction against the son of the opposite party No.4.

7. Reference has also been made to fact that post lodging of the complaint under Section 156(3) of the Cr.P.C. a police report stood submitted on 3.6.2024 which also fortifies the fact that the complaint is an outcome of vendetta, an abuse of process of law and as a matter of act a counter blast.

8. Additionally, it has been argued that the deposition of the victim, the two witnesses Jawahar Lal and Uday Bhan and of the complainant are in variance with the allegations contained in the complaint. It is thus prayed that the present case is a classic case of malicious prosecution and abuse of process of law and thus this court may interfere with the proceedings and quash the entire proceedings including the summing order.

9. Countering the submissions of the learned counsel for the applicant, Sri Arun Kumar, learned counsel for the opposite party no.4 has submitted that the order of the court below summoning the applicant does not suffer from any illegality. Further submission is that though the allegations contained in the complaint were referable to committing a bad act by the applicant and the other co-accused with the victim, but on the basis of the statements so sought to be made under Sections 200 & 202 of the Cr.P.C. the applicant has been summoned under Section 354 IPC read with Section 7/8 of the POCSO Act. According to the learned counsel for the opposite party No.4, this Court may not interfere in the present proceedings at this stage particularly when offences are made out as apparent from the statements under section 200 & 202 of the Cr.P.C. read with the allegations contained in the complaint. He further submits that merely because the victim was not medically examined would not be a factor to throttle the investigation as the same may assume relevancy when a decision is to be taken post trial whether the accused is to be convicted or acquitted.

10. Learned AGA has supported the arguments so sought to be raised by the learned counsel for the opposite party No. 4 and according to him, the summing order is perfectly valid and there is no jurisdictional error committed so as to interfere in the other proceedings at this stage.

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

12. Apparently on 30.5.2024 a complaint stood lodged by the opposite party no.4 against the applicant and other co-accused with the allegation that on 26.5.2024 at 7 in the evening when the victim had gone to answer nature's call near the standing crop then applicant along with the other co-accused dragged her to the agriculture field and committed bad act and on account of raising of hue and cry by the victim Jawahar Lal and Uday Bhan, who are the residents of the village came to the place of incident and seeing them the applicant along with the other co-accused hurled abuses and threatened and thereafter left the place of occurrence. On behalf of the prosecution, statement of the complainant was recorded under section 200 Cr.P.C. wherein it was deposed that bad act was committed by the applicant and the other co-accused against the victim and the victim in her statement also deposed that her modesty was outraged by the applicant and the other co-accused and similarly Jawahar Lal and Uday Bhan also supported the prosecution story.

13. The Special Judge POCSO Court Mainpuri, on 20.2.2025 summoned the applicant and the other co-accused under Section 354 IPC read with Section 7/8 of the POCSO Act.

14. The submission of the learned counsel for the applicant is that he is innocent and there are major inconsistencies in the deposition of the statements under Section 200 & 202 of the Cr.P.C. vis-a-vis the complaint is concerned as though the complainant in the complaint has alleged that she along with Jawahar Lal and Uday Bhan had gone to the place of the incident but the victim in her

statements has come with a stand that only Jawahar Lal and Uday Bhan had come and further nobody had seen the commission of the offence is concerned, the same would not be of much relevance at this stage when there is a direct allegation of the victim against the applicant for commission of the offences by the applicant. What would be relevant at the stage summoning is the depositions of the under Section 200 and 202 of the Cr.P.C. vis-a-vis the complaint. Since the victim has made direct pin pointed allegation against the applicant, thus whatever might be the surrounding factor and circumstances, there impact is to be seen at the stage of trial and the summoning order cannot be said to be vitiated. The theory sought to be canvassed of the learned counsel for the applicant about exaggeration in the depositions made by Jawahar Lal its effects are to be scrutinized when the trial commences post adducing of her evidences.

15. Apart from the same as regards the submission that since the victim was not subjected to medical examination, thus, the very basis of the prosecution would erode is also not convincing for the simple reason that the same may weaken the case of the prosecution but the stage of consideration has not yet arrived as it would be after the commencement of the trial i.e. while taking a decision whether it is the case of conviction or acquittal. Moreover, non-retaining of blood stained, clothes would also not be the sole factor to quash the criminal proceedings as the same may be one of the factors which can on its own strength result to conviction or acquittal.

16. Much emphasis has been laid down by the learned counsel for the applicant that there happens to be a first information report lodged on 9.2.2023 being No.0024, under Sections 363, 366, 120 IPC against the son of the opposite party no.4 and also submission of a charge sheet on 27.4.2023 under Sections 363, 366, 376-D IPC read with Section 5(G)/6 of the POCSO Act and rejection of the bail on the basis of the opposition of the applicant faction which became the motivating factor for lodging of the criminal proceedings is concerned, the same at best a defence. The stage of considering the defence would arise when the trial commences.

17. Nonetheless, what is required of the Court while summoning the accused is the allegations contained in the complaint as well as the depositions made under Section 200 and 202 of the Cr.P.C. Once prima facie offences are made out then it would not be appropriate to throttle the proceedings at a stage when the case warrants trial.

18. No hard and fast rule can be flagged but each and every case depends upon its own facts and circumstances. There is another face it which also needs to be noted that the offences alleged are under Section 354 IPC read with Section 3/7 of the POCSO Act meaning thereby that Section 29 of the Act, 2012 would come into play which deals with presumption as to certain cases according to which where a person is prosecuted for committing or abating or attempting to commit an offence under Sections 3, 5, 7 & 9 of the Act, the Special Court shall presume, that such person has committed or abated or attempted to commit the offence, as the case may be unless the contrary is proved. Unless "the contrary is proved" is of great significance as the legislature has deliberately employed the said works in Section 29 of the Act, 2012. Since a statutory presumption has been appended for the said offences, then even otherwise it would not be appropriate for the Court to throttle the investigation.

19. Nonetheless, the Honble Apex Court in *Shafiya Khan @ Shakuntala Prajapati Vs. State of U.P.* (2022) LiveLaw (SC)153 had the occasion to consider the ambit and the extent of intervention under Article 482 Cr.P.C. wherein in para 15, 16, it was observed as under:-

"15. The exposition of law on the subject relating to the exercise of the extra ordinary power under Article 226 of the Constitution or the inherent power under Section 482 Cr.PC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in *State of Haryana and others vs. Bhajan Lal and others* (supra) as under :

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.?

16. The principles laid down by this Court have consistently been followed, as well as in the recent judgment of three Judge judgment of this Court in Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and others AIR 2021 SC 1918."

20. Analysing the case from four corners of law, I find no good ground to invoke inherent jurisdiction under Section 528 of the BNSS. while quashing the criminal proceedings.

21. Resultantly, the application is dismissed.

22. Needless to point out that the passing of this order may not be construed to be an expression on the merits of the matter and it is open for the trial court to proceed with the matter and decide the same strictly in accordance with law with most expedition.

Order Date :- 22.4.2025 piyush