Naik Amit Kumar vs State Of U.P. And 4 Others on 24 April, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:62602

Court No. - 73

Case :- APPLICATION U/S 528 BNSS No. - 5632 of 2025

Applicant :- Naik Amit Kumar

Opposite Party :- State Of U.P. And 4 Others

Counsel for Applicant :- Krishna Kant Vishwakarma

Counsel for Opposite Party :- G.A.,Veerendra Singh

Hon'ble Vikas Budhwar,J.

1. Heard Sri Sanjai Kumar Singh (AoR No.A/S0227/12) holding brief of Sri Krishna Kant Vishwakarma, learned counsel for the applicant as well as Sri Indrajeet Singh Yadav, learned A.G.A. for the State and Sri Veerendra Singh for O.P. No.4.

2. A joint statement has been made by 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.

3. With the consent of the parties, this application is being decided at the fresh stage.

4. This is an application under Section 528 of BNSS preferred by the applicant for quashing the summoning order dated 12.12.2023 passed by the Additional District & Sessions Judge/Special Judge POCSO Act, Prayagraj (contained in Annexure No.1 to the affidavit) as well as entire proceeding of Complaint Case No.317 of 2023, Colonel S.Bhatacharya versus Naik Amit Kumar under Sections 354 I.P.C. & Sections 9/10 POCSO Act, Police Station Cantt, District-Prayagraj pending in the court of Additional District & Sessions Judge/Special Judge POCSO Act, Prayagraj.

5. The case of the applicant is that on 19.10.2023, a complaint stood lodged against the applicant by the Senior Registrar, Military Hospital, Prayagraj on behalf of the prosecutrix shown as XYZ on an application of the mother of the victim/O.P. No.4 with an allegation that on 17.09.2023, the victim, who happens to be a minor girl aged about 9 years 11 months, had gone to the Military Hospital complaining of high fever and vomiting accompanied with her mother and elder brother. The elder brother of the victim had gone out to bring medicines and mother was receiving a call outside. The applicant, who was on duty in the Military Hospital asked her to lye down on the bed in order to fix drip and thereafter in the absence of the mother and the brother of the victim, he molested and committed an act invoking the penal provision under the POCSO Act while putting the private part (genital) in the hand of the victim and inserting finger in private part of the victim while closing the door and when the mother and elder brother of the victim entered the room, the applicant proceeded to wear the pants. Pursuant whereto, a complaint was lodged, statements under Section 200 of the complainant and 202 of the victim and of the mother of the victim were recorded, pursuant whereto, Additional District & Sessions Judge/ Special Court (POCSO), Allahabad proceeded to summon the applicant on 12.12.2023 under Section 354 IPC, read with Section 9/10 of the POCSO Act. Learned counsel for the applicant has submitted that the enitre story, which is being sought to be cooked up is a false and a concocted story, particularly in view of the fact that no such incident occurred as in the departmental enquiry so sought to be proceeded against the applicant. In the room where the victim was lying and was being treated besides the victim, there were three other patients, thus it is not possible in any manner whatsoever for a prudent man to think that such type of offences could be done in public. He further submits that in the medical examination of the victim, no injury watsoever was found and there was no abnormality in that regard. Contention is that had the said offences been committed, then obviously something would have surfaced in the medical report. It is also the submission of learned counsel for the applicant that the court below while summoning the applicant as a matter of routine had summoned without due application of mind and without considering the statements under Sections 200 and 202 of CrPC read with the complaint. Argument is that on mere asking the applicant has been summoned. He seeks to rely upon the decision of the Hon'ble Apex Court in the case of Dr. SR. Tessy Jose and others vs. State of Kerala, Criminal Appeal No(s). 961 of 2018 decided on 01.08.2018 and Application under Section 482 No. 11135 of 2020, Hamid Ali vs. State of U.P. and another, decided on 06.07.2020 so as to contend that there has to be an application of mind at the end of court while summoning.

6. Countering the submissions so made by the learned counsel for the applicant, Sri Veerendra Singh, learned counsel for O.P. No.4 has submitted that the summoning order cannot be said to be illegal particularly, when the depositions under Section 200 and 202 of CrPC and the complaint had already been considered while summoning the applicant. He further submits that there happens to be pinpointed allegations against the applicant not only by the complainant/ victim. Thus it is not a case wherein the investigation is to be throttled at this stage.

7. Sri Indrajeet Singh Yadav, learned A.G.A. has supported the argument of the learned counsel for O.P. No.2. He submits that what is to be seen at the stage of summoning is the fact as to whether the allegations contained in the complaint are in conformity and in consonance and not at variance with the statements under Section 200 and 202 of CrPC and prima facie offences are made out which are triable.

8. I have heard learned counsel for the parties and perused the records carefully.

9. In the present case, the Court is confronted with the challenge made to a summoning order. There are certain broad parameters which are to be seen while determining the fact as to whether the summoning order is vitiated or not. One of the same is the allegation vis-a-vis the statements under Sections 200 and 202 of CrPC. Apparently, here in the present case, a complaint was lodged by the Senior Registrar of the Military Hospital, Prayagraj, probably on account of the fact that the alleged offences stood committed in the Military Hospital. As per the allegations, the applicant is stated to have committed the offences under Section 354 IPC read with Section 9/10 of POCSO Act as noticed hereinabove. The statement of Senior Registrar, Military Hospital, Prayagraj under Section 200 CrPC as well as of the victim and the statement of the mother of the victim/complainant also pinpoints allegations of commission of offences under Section 354 IPC and 9/10 of the POCSO Act, against the applicant. The court below while summoning the applicant has taken into note the statement under Section 200 and 202 CrPC of the witnesses, which is apparent from the summoning order. The learned counsel for the applicant submits that there happens to be no finding recorded regarding the sufficiency of the material to summon the applicant even on prima facie basis, the same is preposterous besides being out of context, particularly when a bare perusal of the summoning order itself shows that there has been a consideration of statements under Sections 200 and 202 CrPC and court below found the case to be triable. The court below is required to have a prima facie satisfaction and what the Courts while scrutinizing the said summoning order is to see, is that there happens to be consideration of the statement of the witnesses and commission of offences disclosing offence on prima facie basis. Here in the present case, the Court finds that there has been consideration of the material, which was available on record. Moreover, once the statements under Sections 200 and 202 CrPC are in conformity and in consonance and not in variance with the allegations in the complaint, then in these circumstances, it would not be appropriate for this Court to throttle the investigation at this stage. As regards the reliance so placed upon the judgment in the case of Dr. Sr. Tessy Jose (supra) is concerned, that was a case under Section 19(1), Section 21(1) of the POCSO Act and Section 75 of the Juvenile Justice Act, wherein the appellant in the said appeal was Gynecologist Pedeatrician and the Hospital Administrative. Nowhere in the said judgment, the issue relatable to the offences which are of the present nature was considered. The said judgment is not applicable in the facts of the case. With regard to the judgment in Hamid Ali (supra), there is no quarrel to the proposition of law, as enunciated therein that the Magistrate has to apply its mind and he cannot pass a cryptic order and he has to record prima facie satisfaction. Indeed, in the present case, there has been prima facie satisfaction and the order itself encompasses the statements under Sections 200 and 202 of CrPC. In so far as, the submission of the learned counsel for the applicant that nothing was found abnormal in the medical reports, when the victim was subjected to medical examination is concerned, the same would not be relevant at this stage in the present proceeding as the same may have any effect when the trial commences at a stage where a decision is to be taken, as to whether the accused is to be acquitted or convicted. So much so, with regard to the submission that the said incident could not have been committed in a place where besides the victim, there were other patients, is a matter which cannot be gone into or considered at this stage as the same may be raised and termed to tenable or not at the stage when the trial commences.

10. There is another facet of the matter which would also assume relevancy, i.e. Section 29 of the Protection of Children from Sexual Offences Act, 2012, presumption has to certain cases, 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, abetted or attempted to commit the act, as the case may be, unless the contrary is proved. The word employed by the legislature (unless the contrary proved) assumes relevancy, particularly when in such type of matter, they are to be thrashed out in a trial. 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:
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> 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;
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> ii) Courts would not thwart any investigation into the cognizable offences;
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> 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;
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> 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).
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> 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;
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> 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.?

11. Analyzing the case from the four-corners of law, this Court finds that none of the exceptions are applicable in the present case so to warrant interference.

12. Accordingly the application is rejected.

13. Needless to point out that passing of the order may not be construed to be an impress that this Court has gone into the merits as the trial court shall proceed to decide the trial strictly in accordance with law.

14. At this stage, learned counsel for the applicant submits that a compromise application has been submitted on 07.01.2025 by the mother of the victim, a copy whereof is Annexure-13 at page-80 of the paper-books, reference whereof has been made in paragraph-38 of the application that the proceedings be quashed. This Court is not going into the said aspect of the matter at this stage.

Order Date :- 24.4.2025 N.S.Rathour (Vikas Budhwar, J)