

Tasawwar Ali And 2 Others vs State Of U.P. And Another on 4 February, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:15061

Court No. - 77

Case :- APPLICATION U/S 482 No. - 33282 of 2024

Applicant :- Tasawwar Ali And 2 Others

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

Counsel for Applicant :- Matiur Rehman Khan, Talha Uzair Usmani

Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard Sri Farhan Khan, learned counsel holding brief of Sri M.R. Khan, learned counsel for the applicants and Sri Anish Kumar Upadhyay, learned AGA for the State.
2. The present 482 Cr.P.C. application has been filed to quash the entire proceedings of Complaint Case No.653 of 2018 (Smt. Khushmud Vs. Tasawwar Ali and others), under Sections-498A, 420 IPC & Section 3/4 D.P. Act, pending in the court of A.C.J.M., Court no.16, Prayagraj.
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 26.09.2024. 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observed that all the applications filed u/s 482 Cr.P.C. after 01.07.2024 are not maintainable as the Cr.P.C. has been repealed and New Act i.e. BNSS has been enforced on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 Criminal Misc. Writ Petition No.12287 of 2024 (Deepu & 4 Others Vs. State of U.P. & 3 Others) 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. Relevant extract of the resolution of the Committee for implementation of New Criminal Law is being quoted as under:

S.No. Agenda Resolutions

1.

To outline the procedure to be followed with respect to the reporting of criminal cases i.e. appeals, bails and applications u/s 482 Cr.P.C. etc. being instituted in the High Court after the enactment of Bharatiya Nagarik Suraksha Sanhita, 2023 in view of the order dated 06.08.2024 of the Hon'ble Court.

The Committee perused the note dated 20.08.2024 of the Stamp Reporter (Criminal) section & order dated 06.08.2024 of the Court passed in Criminal Misc. Writ Petition No. 12287/2024 titled as Deepu and 4 others vs. State of U.P. and 3 others and discussed the matter at length.

In light of the discussions held, the Committee resolved as under :-

1. The Stamp Reporter (Criminal) section is directed to comply with the order dated 06.08.2024 passed in Criminal Misc. Writ Petition No. 12287/2024.
2. In case, while reporting, there is any deviance with the order dated 06.08.2024, then the case shall not be withheld but shall be placed before concerned Court alongwith 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. Therefore, Stamp Reporter (Criminal) Section is directed not to clear any application filed u/s 482 Cr.P.C. w.e.f. 10.02.2025 and in case any application is filed u/s 482 Cr.P.C. which is in deviation of the order dated 06.08.2024 passed in Deepu's case (supra), defect of non-maintainability be reported.

8. 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 applicants to file fresh application u/s 528 of BNSS to challenge the impugned proceeding.

9. Office is directed to return the certified copy of the impugned order/orders to the learned counsel for the applicants, after retaining the photocopy of the same.

10. Registrar (Compliance) is directed to send copy of this order to the concerned sections for necessary compliance.

Order Date :- 4.2.2025 S.Chaurasia