

Ramratan Alias Jhallar Lodhi vs State Of U.P. And 3 Others on 29 April, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:66370

Court No. - 73

Case :- APPLICATION U/S 528 BNSS No. - 13391 of 2025

Applicant :- Ramratan Alias Jhallar Lodhi

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

Counsel for Applicant :- Rahul Mishra

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

Hon'ble Vikas Budhwar,J.

1. Heard Sri Rahul Mishra, learned counsel for the applicant as well as Sri Motilal, learned AGA for the State and Sri Manvendra Singh for the opposite party no. 2.
2. This application has been preferred for quashing the entire criminal proceedings including the impugned summoning order 18.05.2024 passed by learned Additional Session Judge/Special Judge POCSO Act Fatehpur in complaint case no. 172 of 2022 (Harishankar alias Charan Lodhi vs. Ramratan alias Jhallar Lodhi) under Section 376, & 504, IPC and section 4 OF PACSO Act at Police Station- Thariyanv, District- Fatehpur.
3. 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.

4. The case of the applicant is that a complaint was lodged by the opposite party no. 2 against the applicant under Section 156(3) Cr.P.C. with an allegation that on 16.04.2022 at about 2:30 in the night his minor daughter, victim was sleeping in the house and at that point of time, the applicant herein with ill intentions entered into the house and he untied the salwar which the victim was wearing and attempted to commit bad act while pouncing upon the victim and when the victim screamed then the brother of the complainant and the wife of the complainant came to rescue and then they found that the applicant was already present over there and he on the arrival of the wife and the brother of the opposite party no. 2 hurled abuses and administered threat. On the next day, the opposite party no. 2 is alleged to have approached the police for lodging of the FIR but nothing was done but only proceedings under Section 151 Cr.P.C. was undertaken while challaning the accused and on 27.04.2022 a registered complaint was sent to the Superintendent of Police, Fatehpur and to the Chairman, Women Commission, Lucknow and since nothing proceeded with so on 04.05.2022 complaint has been lodged. Learned counsel for the applicant further submits that on the basis of the statement under Section 200 and 202 of the Cr.P.C., now the applicant has been summoned by the Court of Additional Sessions Judge/Special Court, POCSO Act, Fatehpur on 18.05.2024 under Section 376 and 504 IPC read with Section 3/4 of POCSO Act.

5. Learned counsel for the applicant has sought to argue that the order dated 18.05.2024 passed by the Additional Sessions Judge/Special Court, POCSO Act, Fatehpur summoning the applicant under Section 376 and 504 IPC read with Section 3/4 of the POCSO Act cannot be sustained for the simple reason that there happens to be grave inconsistency and variation in the statement of the victim vis-a-vis of the complainant, the mother of the victim and the allegations contained in the complaint. Submission is that in the complaint itself speaks out that no bad act was committed and it is also not in the statement of the mother of the victim that any bad act was committed with the victim but the victim in her statement under Section 202 has come up with the stand that she was subjected to bad act and outraging of modesty. Argument is that there is material contradiction in the statements under Section 200 & 202 vis-a-vis the complaint, thus, the entire prosecution theory stands eroded and the applicant could not have been summoned under Section 376 IPC read with Section 3/4 of the POCSO Act. It is further submitted that the victim herself was not subjected to medical examination, thus, now there remains nothing to be proceeded against the applicant with regard to inflicting criminality. It is also submitted that though the complainant in his deposition under Section 200 of the Cr.P.C. had come up with a stand that there happen to be no grudge against the applicant as neither there was any civil or criminal proceedings pending but in the police report, it has come on record that proceedings under Section 151 Cr.P.C. stood initiated.

6. Contention is that a concocted story has been planted just in order to rope in the applicant as there is nothing on record to substantiate that the applicant has committed any offence. He further submits that the applicant is innocent. Additionally, it is argued that court below while summoning the applicant has passed an order in a mechanical manner without considering the fact that there happens to be a major inconsistency which goes to the root of the matter which erodes the prosecution case, thus, it is prayed that the summoning order be quashed.

7. Countering the submission of the learned counsel for the applicant, Sri Manvendra Singh has submitted that once the victim herself has deposed that bad act has been committed by the applicant

and she had been subjected to outraging of modesty then in the circumstances, the summoning order cannot be said to be vitiated. He further submits that the complainant was not present at the time when the incident took place as he was in the field along with other daughters and the mother was also sleeping in another room, thus, the victim itself has witnessed and was subjected to ill treatment by way of a bad act, thus, the statement of the victim cannot be diluted or ignored.

8. Learned AGA has supported the statement so made by the counsel for the opposite party no. 2 and he submits that the summoning order is perfectly valid in accordance with law and no faulted whatsoever is attributed in this regard.

9. I have heard the submissions of the rival parties and perused the record carefully.

10. In the present case, an order summoning the applicant under Section 376 and 504 IPC read with Section 3/4 of the POCSO Act is under challenge. There are certain broad parameters which play a vital role while making the basis for determining as to whether the case in hand is triable or not prima facie, on the basis of materials available on record. The Court while summoning the accused is to accord prima facie satisfaction that the case is triable. The one of the criteria whereof is the allegations in the complaint vis-a-vis the depositions in the statement under Section 200 and 202 Cr.P.C. Applying the said principles in the present facts of the case, it is apparent that a complaint stood lodged by the opposite party no. 2 against the applicant under Section 156(3) of the Cr.P.C. relating to the commission of offences on 16.04.2022 at 2:30 P.M. when the victim was alone in the room and the applicant pounced upon her and attempted to commit bad act. Though the complaint as noticed above attempt to commit bad act or attempting to outrage the modesty has been alleged and so much so in the statement of the complainant under Section 200, it has been alleged that the applicant was unsuccessful in committing bad act and the statement of the mother of the victim under Section 200 also does not say about any commission of the bad act but the statement of the victim under Section 202 spells out that the applicant had untied the salwar and committed bad act while outraging the modesty.

11. Interestingly, as per the complaint, the complainant was in the agricultural field so he was not present and he did not witness the said incident. As regards the mother of the victim, she had deposed that at the time of the incident, the victim was in the house and the other two sisters were in the agricultural field with their husband. In the statement of the mother of the victim, it is alleged that the victim when confronted with the presence of the applicant while committing the said offences she ran away for a help from the mother and thereafter, the mother came then the victim after hurling abuses left the place. The mother of the victim has alleged that the applicant had covered the mouth of the victim and he untied the salwar. The victim in her statement has come up with a stand pin pointing the accused of subjecting her to commit bad act and outraging modesty. The argument of the learned counsel for the applicant that since as per the statement of the complainant, no bad act was committed and though, it was attempted to be committed and the mother of the victim had not said about committing of the bad act so weightage cannot be granted to the statement of the victim is concerned, the same though appears to be attractive but it is not liable to be accepted as such particularly at this stage. The reason is that the statement of the victim cannot all together be ignored, however, its impact and effect is to be considered vis-a-vis the

statement of the other witnesses at a stage when the trial commences and not at this juncture when the trial has not commenced. As regards, the submission of the learned counsel for the applicant that the victim was not subjected to medical examination so there is nothing on record to substantiate that any bad act was committed and the prosecution case would fall on this count is concerned, the same may have an effect or impact at the time when the trial commences when a decision is to be taken as to whether the accused is to be acquitted or convicted, since the said stage has not arrived, thus, this Court is not required to delve into the said issue.

12. There is another facet of the matter, Section 29, presumption as to certain offences according to which where a person is prosecuted for committing or abetting or attempting to commit an offence under sub 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 contrary is proved. Since there happens to be presumption and the employment of the word 'unless contrary is proved' is of significance as in the given case it is a subject matter of trial. With respect to the argument of the learned counsel for the applicant that in the statements under Section 200 of the complainant there happens to be a deposition of the complainant that there was rivalry between the applicant and the opposite party no. 2 but, in fact, as per the police report two days ago there happens to be proceedings under Section 151 of the Cr.P.C. which became the basis of lodging of the criminal proceedings is concerned, and thus, the criminal proceedings are vindictive and abuse of process of law is concerned, in the opinion of the Court is a subject matter of trial being a defence which is to be thrashed out when the trial commences. So far as the argument that the incident is dated 16.04.2022 but the complaint has been lodged on 04.05.2022 is concerned, thus, the same cannot be sustained is concerned, the same is a matter of trial. Even otherwise as per the complaint, on 27.04.2022 a registered complaint was sent to the SSP and to the President of Women Commission.

13. The question of delay in lodging of the complaint would have its own effect at the time when the trial commences when a decision is to be taken either to acquit or to convict the accused. Moreover, the Court finds that while summoning the applicant due consideration has been made to the statements under Section 200 and 202 Cr.P.C. as well as complaint. The court below was prima facie satisfied on the basis of the documents available on record that the case is triable. It cannot be said that there has been non application of mind at the end of the Court.

14. 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.?

15. Here, in the present case, there is nothing to show that there is any exception attached to the case of the applicant.

16. 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.

17. Resultantly, the application is dismissed.

Order Date :- 29.4.2025 Rajesh