

# Kavali Shekar vs The State Of Telangana on 18 December, 2024

**Author: K. Lakshman**

**Bench: K. Lakshman**

HON'BLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION No.14418 OF 2024

ORDER:

The present Criminal Petition is filed under Section - 528 of The Bharatiya Nagarik Suraksha Sanhita (for Short "BNSS") to quash the proceedings against petitioner/A-33 in connection with FIR No.153 of 2024 of P.S. Bomraspet Police Station, Vikarabad District.

2. Heard Mr. Heroor Yogesh Kumar, learned Counsel for the petitioner and Mr. Palle Nagreshwar Rao, learned Public Prosecutor appearing on behalf of respondent - State.

3. This application is filed under Section 528 of BNSS seeking to quash the proceedings against him in Crime No.153 of 2024 pending on the file of P.S.Bomraspet. Petitioner is A-33 in Cr.No.153 of 2024 pending on the file of P.S. Bomraspet. The offences alleged against the petitioner herein are under Sections 191 (2), 191 (3), 132, 109, 121 (1), 126 (2), 324 (4) read with 190 of the Bharatiya Nyaya Sanhita (for Short "BNS") and under KL,J Section 3 of the Prevention of Damage to Public Property (for Short "PDPP Act").

4. As per the complaint dated 11.11.2024 the allegations leveled against the petitioner herein and others are as follows:

On 11.11.2024 at about 11:00 AM, de facto complainant along with District Collector/LW-21 went to outskirts of Lagacherla village for the purpose of conducting public opinion program in view of proposed establishment of Pharma Company.

Bandobusth arrangements have been made as per the schedule.

The aforesaid officers reached at the aforesaid place for public opinion but no one was there to participate in the public opinion.

A-2 requested the District Collector to conduct meeting in the village itself otherwise none of them will come to the said place of hearing. Believing the said version of A-2, District Collector/LW-

21 and others proceeded to the Lagacherla village in vehicle bearing No.TS-07-EV-2929 belonging to District Collector and other officers, also followed

District Collector in their vehicles.

The complainant along with Janaiah, D.S.P also proceeded to the village and found that as per the pre-plan, the villagers of KL,J Lagacherla, Rotibanda thanda, Pulicherlakunta thanda formed into an unlawful assembly with stones and sticks at around 12:20 PM, when the aforesaid officers reached the village, the persons including the petitioners/A-5, A-6, A-9, A-10, A-47 and others formed into an unlawful assembly, stopped the vehicle of District Collector with slogans at Anjaneya Swamy Temple of the said village. When the District Collector and Special Officer Sri Venkat Reddy (LW-22) came out of their vehicles, the aforesaid accused attacked on the Special Officer. But sensing the same, that they would definitely attack with stones, sticks and red chilly power, de facto complainant and other officers shifted the District Collector immediately in his vehicle. In the meantime, the accused persons damaged the other vehicle belongs to the District Collector. When LW-22 tried to subsidize the issue, he was attacked by them with stones, sticks at Primary School due to which he received injuries on his left hand, back side, neck and right leg. The complainant rescued him from the clutches of the aforesaid persons otherwise they would have definitely killed him and in the said attack he has received injuries to his back, right side temple region and right KL,J knee. They have also attacked the complainant with sticks and stones. In the said incident Government vehicle bearing No.TS-36- N-3636 belongs to LW-22 was also found damaged.

5. On the said complaint lodged by LW-1, Police Bomraspet registered the aforesaid crime against the petitioner and others for the aforesaid offences. During the course of investigation, the investigating officer arrested 34 persons out of 71 accused and recorded the statements of 25 witnesses.

6. Petitioner filed the present petition under Section 528 of BNSS seeking to quash the proceedings against him in Crime No.153 of 2024 on the file of P.S.Bomraspet on the following grounds:

(i) His name is not there in the complaint dated 11.11.2024.

(ii) His name was included in the remand case diary of other accused.

(iii) There are no specific overt acts against the petitioner herein. The role played by him in commission of offence is also not there.

(iv) The contents of complaint lodged by 2nd respondent and statements of 25 witnesses recorded by the KL,J investigating officer lack ingredients of offence under Section 109 of BNS.

7. Though the petitioner filed the present petition to quash the proceedings in Crime No.153 of 2024, the learned counsel for the petitioner is confining the present petition only to the extent of quashing the F.I.R in so far as offence under Section 109 of BNS is concerned.

8. The punishment for the offences alleged against the petitioner except under Section 109 of BNS is less than 7 years and therefore petitioner is entitled for protection under Section 35 (3) of BNSS. To harass the petitioner, police have included the name of the petitioner. To attract offence under

Section 109 of BNS, there should be intention of killing and having the knowledge that the said act causes death. In the present case, there was no intention to the petitioner to kill anybody including LW-22. In fact, identification of the petitioner is also doubtful. LW's 4,5,6,7, 17 except referring the name of the person at the spot, they did not state that petitioner attacked the officers including the District Collector, LW-22 with an intention to kill them. They only stated KL,J that the petitioners tried to attack on the officers with sticks and stones without even opening dialogue. Observing the same, the aforesaid witnesses went away. Prima-facie, the allegations are against A-2. Therefore, petitioner is seeking to quash the proceedings against him in Cr.No.153 of 2024 in so far as offence under Section 109 of BNS is concerned.

9. Whereas, learned Public Prosecutor contended that petitioner is part of the conspiracy and he along with other accused gathered aside, attacked on the District Collector and other officials LW-22 with an intention to kill them. They came with sticks, stones and chilly powder and attacked on the officers without even opening dialogue. Thus, there are specific allegations against the petitioner herein. Investigation is under progress. The investigating officer recorded the statements of 25 witnesses. Therefore, during the course of investigation, the investigating officer will consider the statements of the witnesses and material available and lay charge sheet in terms of Section 193 of BNSS (formerly 173 of Cr.P.C). Therefore, quashing the present proceedings against the petitioner in so far as offence under Section 109 of BNS is impermissible.

KL,J

10. In the light of the said submissions, it is relevant to note that Section 109 of BNS deals with Attempt to Murder. The same is relevant and it is extracted below:

1. Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

2. When any person offending under sub-section (1) is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death or with imprisonment for life, which shall mean the remainder of that person's natural life.

Thus, the punishment for the said offence is 10 years of imprisonment and fine.

11. Thus, the punishment for the aforesaid offences except under Section 109 of BNS is below 7 years. Therefore, petitioners are entitled for benefit under Section 35 (3) of BNSS.

KL,J

12. To constitute an offence under Section 109 of BNS, there should be intention to kill or knowledge that such act would cause death of the person.

13. In NARINDER SINGH AND OTHERS V. STATE OF PUNJAB AND OTHERS <sup>1</sup> Hon'ble Apex Court held that offences under Section 307 of IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court has to examine as to whether incorporation of Section 307 of IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 of IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical Report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High 2014 (6) SCC 466 KL,J Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak.

14. In NEEHARIKA INFRASTRUCTURE PVT.LTD. VS. STATE OF MAHARASHTRA AND OTHERS <sup>2</sup> the Hon'ble Apex Court laid down certain guide lines for exercising of power of this Court under Section 482 of BNSS.

15. In SALIB V. STATE OF UP & OTHERS <sup>3</sup> the Hon'ble Apex Court held that whenever an accused comes before the Court invoking either the inherent powers under Section 482 of Cr.P.C or extraordinary jurisdiction under Section 226 of the Constitution of India to get the F.I.R or the criminal proceedings are quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances, the Court owes a duty to look into the FIR with care and a little more closely. Whereas Once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance MANU/SC/0272/2021 MANU/SC/0851/2023 KL,J etc., then he would ensure that the FIR/Complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/Complaint are such they disclose the necessary ingredients to constitute the alleged offence.

16. In STATE OF BIHAR V. NATHU PANDEY AND OTHERS <sup>4</sup> Hon'ble Apex Court held that the object of the party was to prevent the commission of theft of the mahua fruits in exercise of their right of private defence of property. This object was not unlawful. Nor is it possible to say that their common object was to kill Ramdhari and Ramswarup etc.

17. However, the petitioner has confined the present petition for quashment of the offence under Section 109 of BNS. Therefore, the said principle laid down by the Hon'ble Apex Court in State of Bihar V. Nathu Pandey and others of no use.

18. In STATE OF HARYANA V. CH. BHAJAN LAL AND OTHERS <sup>5</sup> wherein the Hon'ble Apex Court laid down certain factors to consider for quashing criminal proceedings by the High 1992 Supp (1) SCC 335 KL,J Court in exercise of its inherent powers under Section 482 of Cr.P.C. The same are relevant and same are extracted below:

"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 extra-ordinary 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 channelized 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 F.I.R do KL,J 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 F.I.R 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.

KL,J

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."

19. As discussed supra, to attract offence under Section 109 of BNS, there should be intention to kill and that the petitioner shall have the knowledge that such act done by him will cause death of the victim. Admittedly, investigation is pending in the subject crime and investigating officer has to consider the statements of witnesses and other material before laying charge sheet against the petitioner and other accused for the offence under Section 109 of BNS. He has power either to delete or include names of accused and offences basing on the investigation. Therefore, at this stage quashing the proceedings against the petitioner for the offence under Section 109 of BNS is not permissible.

20. As held by Hon'ble Apex Court in the aforesaid decisions, this Court has to see the statements of the witnesses and the entire material on record and that the contents would prima facie constitute the offence alleged against the accused. In the present KL,J case, learned counsel for the petitioner is placing heavy reliance on the injury certificate of LW-22. Perusal of the same would reveal as follows:

- 1) Abrasion over (L) forearm 2 cm x 5 cm - Simple
- 2) Superficial abrasion over (L) Thigh - Simple
- 3) Small, multiple, superficial abrasion over ® Hand -

Simple

- 4) Superficial abrasion over ® Calf - Simple
- 5) Multiple bruises over the back - Simple
- 6) Pain over (L) Little finger (?) - Fracture - Grievous
- 7) ® Sided diminished wearing and echoing - (?) - Grievous.

Thus, LW-22 received only 5 simple injuries and with regard to two injuries, there was question mark before "fracture and grievous".

21. However, it is for the investigating officer to consider the said aspects. It is the specific case of the prosecution that petitioner and other accused at the instance of A-1 formed into an unlawful assembly, they came to the said place along with stones, sticks and KL,J chilly powder. They attacked on the officers including the District Collector without opening a dialogue. The said aspects are factual aspects which this Court cannot consider in a petition filed under Section 528 of BNSS. It is for the investigating officer to consider the said aspects.

22. In SKODA AUTO VOLKSWAGEN INDIA PRIVATE LIMITED V. THE STATE OF UTTAR PRADESH AND OTHERS 6 the Hon'ble Apex Court categorically held that this Court has to exercise its inherent powers under Section 528 of BNSS in rarest of the rarest cases and with great caution and circumspection. In rarest of rare cases, this Court has to quash the criminal proceedings against the accused. Investigation is pending. It is not a rarest of the rare case to quash the proceedings for the offence under Section 109 of BNS.

23. As discussed supra, investigation is pending for the aforesaid crime. The investigating officer has to examine some more witnesses and collect evidence including scientific evidence. On completion of the investigation, investigating officer has to lay AIR 2021 SC 931 KL,J charge sheet against the petitioner herein and other accused. He has to consider entire material on record and see whether the same prima-facie constitute the offences alleged against the petitioner and other accused including offence under Section 109 of BNS. On consideration of the same, if the investigating officer comes to a conclusion that the ingredients of aforesaid offences including the offence under Section 109 of BNS are lacking, he may delete Section 109 of BNS or any other offence and he may file charge sheet. It is the duty of the investigating officer to consider entire material on record including the ingredients of Section 109 of BNS. Therefore, this is not a rarest of rare case to quash the proceedings against petitioner/A-33 in Crime No.153 of 2024 pending on the file of P.S Bomraspet for the offence under Section 109 of BNS.

24. However, the petitioner/A-33 is a retired Army Jawan. He was present on 11.11.2024, on the date of public hearing with regard to establishing of Pharma Company. Referring to photograph, learned Public Prosecutor would submit that petitioner is holding a stick with him in his hand and he tried to kill the KL,J District Collector and other officials including LW-22. But, the said contention of learned Public Prosecutor cannot be considered at this stage. It is the specific contention of learned counsel for the petitioner that it is not a stick, brought by the petitioner to the spot and the said stick is used for erecting tent. There was no intention to the petitioner to kill anybody including LW-22.

25. Petitioner is an Army Jawan and he is owner of small extent of land Ac.3.33 guntas and Ac.1.17 guntas in Sy.Nos.104 and 105 of Lagacherla village. After his retirement, he is eaking out his livelihood by doing agriculture.

26. As discussed supra, this Court is not inclined to quash the proceedings in Crime No.153 of 2024 against the petitioner/A-33 pending on the file of P.S.Bomraspet in so far as Section 109 of BNS is concerned. Even then, Court has power to grant him protection by invoking its power under Section 528 of BNS. The said principle was also laid down by this Court in its Judgment dated 24.06.2024 passed in CrI.P.No.1866 of 2024. Considering the said facts, the investigating officer in Crime No.153 of 2024 pending on the file of P.S.Bomraspet is directed not to arrest the KL,J petitioner/A-33. However, he will conduct investigation strictly in accordance with the procedure laid down under BNSS. Petitioner shall co-operate with the investigating officer by furnishing information sought by the investigating officer in concluding the investigation. With the aforesaid directions, this Criminal Petition is disposed of.

