		2025:AHC:209346

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS NO. 37031 OF 2025

AFR

Ashwani Anand		…..Petitioners(s)
	Versus	
State of U.P. and 3 others		…..Respondents(s)

Counsel for Petitioners(s)	:	Anjani Kumar Shukla, Prakash Chand Srivastava
Counsel for Respondent(s)	:	G.A.

Court No. - 78

HON'BLE KSHITIJ SHAILENDRA, J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State-respondents.

2. This application under Section 528 BNSS has been preferred by the applicant with the prayer to quash the charge sheet dated 30.09.2024, cognizance order dated 08.04.2025 as well as entire proceedings of Criminal Case No. 121 of 2025 (State vs. Ashwani Anand) arising out of Case Crime No. 36 of 2024, under Sections 363, 366 IPC and Section 11/12 of Prevention of Children from Sexual Offence Act, 2012, P.S. Rajepur, District Farrukhababad.

FACTUAL MATRIX

3. Father of opposite party no. 4 lodged a First Information Report against the applicant stating that, on 23.04.2024, her daughter had been abducted by the applicant. The matter was investigated into by the police, consequent whereupon a charge sheet was submitted on 30.09.2024 and cognizance was taken on 08.04.2025 under the aforesaid provisions.

4. **The present application is supported by affidavit of opposite party no. 4, i.e. the alleged victim of the offence**. In the affidavit it is stated, as also stands reflected from record, that on 16.08.2024, statement of opposite party no. 4 was recorded under Section 161 CrPC, wherein she denied the allegations levelled in the FIR and stated that on 23.04.2024 she had herself left her home without telling anyone and that she stayed in a Girls P.G. at Ghaziabad and did not stay with the applicant. She also denied any physical relationship in between her and the applicant. As regards her age, in her statement under Section 164 CrPC/183 of BNSS, she stated her age as 20 years, though according to her Adhar Card the same is reflected as 17 years. The mother of opposite party no. 4 also made her statement before the Investigating Officer that because of intimacy in between her daughter and the applicant, she no longer wanted to remain under any kind of relationship with her daughter.

5. Admittedly, marriage has been performed in between the applicant and the alleged victim on 23.06.2025 and the same has been registered on 24.06.2025 under U.P. Marriage Registration Rules, 2017; certificate of marriage is annexed as Annexure No. 6. It is not in dispute that on the date of marriage, opposite party no. 4 had attained age of majority.

SUBMISSIONS ON BEHALF OF THE APPLICANT

6. Learned counsel for the applicant submits that since the

applicant and opposite party no. 4 are residing together in matrimonial relationship, the proceedings of the aforesaid case may be quashed, particularly when the alleged victim has filed her own affidavit in support of the application U/s 528 BNSS.

SUBMISSIONS ON BEHALF OF THE STATE

7. Learned AGA has vehemently opposed the prayer made and it is contended that since offence under POCSO Act is an offence against the society and non-compoundable, the proceedings cannot be quashed merely based upon compromise or the affidavit of the victim. It has been submitted that when the offence giving rise to this case was committed, it was an offence and, therefore, based upon subsequent events, an accused cannot be discharged nor the proceedings should be quashed. Reliance has been placed upon recent decision of Hon'ble Apex Court in **K. Kirubakaran Vs. State of Tamil Nadu, Criminal Appeal No. 679 of 2024**, decided on 28.10.2025.

DISCUSSION

8. Having heard learned counsel for the parties, no dispute is found as regards solemnization of marriage between the parties on 23.06.2025 after the opposite party no. 4 had attained age of majority. In light of the very fact that affidavit in support of the present application has been filed by opposite party no. 4 with a statement that entire allegations levelled against the applicant were false and in statement under Section 164 CrPC/183 BNSS also, prosecution version was not supported by her, it has to be seen as to whether the prayer made by the applicant can be granted.

Few judgments on the issue involved

9. Hon'ble Supreme Court, in **K. Dhandapani Vs. The State By the Inspector of Police, 2022 SCC OnLine SC 1056** and **Mafat Lal and other Vs. The State of Rajasthan, 2022 SCC OnLine SC 433**, quashed the criminal prosecution of accused therein on the ground he

had solemnized marriage with the prosecutrix even though, in **K. Dhandapani (supra),** the accused was her maternal uncle, by observing that "we are of the considered view that the conviction and sentence of the appellant who is **maternal uncle** of the prosecutrix deserves to be set aside in view of the subsequent events that have been brought to the notice of this Court. This Court cannot shut its eyes to the ground reality and disturb the happy family life of the appellant and the prosecutrix. **We have been informed about the custom in Tamilnadu of the marriage of a girl with the maternal uncle**".

10. Similarly, in **Dasari Srikant vs. State of Telangana: (2024) SCC OnLine SC 936**, under identical circumstances, the Hon'ble Supreme Court quashed the proceedings instituted against the accused therein. The relevant paragraphs 8 to 10 of the judgment read as under:-

> "8. Since, the appellant and the complainant have married each other, the affirmation of the judgment rendered by the High Court would have the disastrous consequence on the accused appellant being sent to jail which in turn could put his matrimonial relationship with the complainant in danger.
>
> 9. As a consequence, we are inclined to exercise the powers under Article 142 of the Constitution of India for quashing the conviction of the accused appellant as recorded by the learned trial Court and modified by the High Court.
>
> 10. As a result, the impugned judgment dated 27th June, 2023 passed by the High Court and judgment dated 9th April, 2021 passed by the trial Court are hereby quashed and set aside."

11. In **Mahesh Mukund Patel vs. State of U.P. and Others: 2025 SCC OnLine SC 614** also, the Hon'ble Supreme Court quashed the proceedings of offences, punishable under Section 354A, 363, 366, 376 of the IPC and Section 3 and 4 of the POCSO Act on the ground of marriage between the accused and the victim. It was brought on record there that from the wedlock between the accused and the victim, two children were born. The Hon'ble Apex Court observed that no purpose would be served by continuing the prosecution as it would cause undue harassment to the appellant/accused and the victim and their children.

12. In **Ankit Jatav vs. State of Rajasthan, S.B. Criminal Misc. (Petition) No. 3075 of 2023**, decided on 31.5.2023, a Single Bench of

Rajasthan High Court quashed the proceedings under POCSO Act on the ground that victim in her statement u/s 164 Cr.P.C. had stated that no offence was committed by the accused and she willingly left her house to get married to him.

13. As far as the judgment in **K. Kirubakaran (supra)** cited on behalf of the State, it was a case where the accused was punished after trial and his appeal against the judgment of conviction was dismissed on 13.09.2021. In the meantime, in May, 2021 i.e. pending appeal, the accused and victim solemnized marriage and were also blessed with a female girl and Hon'ble Supreme Court, in the interest of justice, allowed the appeal by observing that law must yield to the cause of justice and that administration of law is not divorced from practical realities. In the same order, an observation was made that since the accused had been **found guilty** of a heinous offence, proceedings in the said case based upon a compromise between the accused and his wife could not be quashed but, even then, the same were quashed after making various observations and in last paragraph of the order, the Hon'ble Supreme Court clearly observed that the judgment shall not be treated as precedent. Para 15 of the judgment reads as under:-

> "15. **Needless to observe, this order is rendered in the unique circumstances that have unfolded before us and shall not be treated as precedent for any other case.**"

14. The present case has reached to this Court at the very initial stage when cognizance order has been passed on 08.04.2025 and even charges have not been framed. Therefore, the facts of the case are different from those involved in the case of **K. Kirubakaran (supra)** and though the said judgment cannot be treated as precedent, as observed by Hon'ble Supreme Court itself, even if the same is followed in the facts of the present case, it would be read in favour of the applicant and not against him.

INHERENT POWERS OF HIGH COURT

15. After discussing the judgments of Hon'ble Supreme Court, this court proceeds to discuss significance of inherent powers by High Court in such matters. It would be appropriate to refer the provisions under Section 482 CrPC and Section 528 BNSS as under:-

> **"482. Saving of inherent powers of High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court** to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court **or otherwise to secure the ends of justice**.
>
> **528. Saving of inherent powers of High Court. Nothing in this Sanhita shall be deemed to limit or affect the inherent powers of the High Court** to make such orders as may be necessary to give effect to any order under this Sanhita, or to prevent abuse of the process of any Court **or otherwise to secure the ends of justice."**

16. Simultaneous reference of **CONSTITUTIONAL POWERS OF HON'BLE SUPREME COURT** conferred by Article 142 may also be made. The same reads as under:-

> "**142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.-** (1) **The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it**, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe....."

THE ONLY OBJECTIVE OF CONSTITUTIONAL COURTS: TO SECURE ENDS OF JUSTICE

17. Whenever question of grant or refusal of grant any relief arises before the High Court in exercise of powers under Section 482 CrPC/Section 528 BNSS and reference is made by either of the parties to judgments of Hon'ble Supreme Court referable to the power exercised under Article 142 of the Constitution of India, it is often argued, as has also been argued in the present case, that quashing of proceedings under the POCSO Act or any other Act where the offences punishable are non-

compoundable or that the offence is against the State, though the Hon'ble Supreme Court can pass any order but the High Court would not be competent to exercise identical powers.

18. A perusal of Article 142 indicates that the Hon'ble Supreme Court, in exercise of its jurisdiction, may pass any such order or decree as is necessary for doing complete justice in any cause or matter pending before it. There cannot be any quarrel about such power exercisable by the Hon'ble Supreme Court, being the Apex Court of the country. However, when question of exercising identical powers arises before the High Court, particularly in matters under Section 482 CrPC/ 528 BNSS, relief is often declined by the High Court despite factual position of the matter being identical to the one present before the Hon'ble Supreme Court while exercising powers under Article 142. **In such matters, power of the High Court notwithstanding anything contained in the Code/Sanhita to secure ends of justice, is either ignored or restricted in itself or avoided from being exercised**.

19. There is no need to refer judgments elaborating inherent powers of the High Court under the aforesaid provisions, however, when the question is either that of **'doing complete justice'** by the Hon'ble Supreme Court under Article 142 or **'otherwise to secure the ends of justice'** by the High Court under Section 482 CrPC/528 BNSS, the same depends on the factual scenario of the case. Under such circumstances, non-exercise of inherent powers would defeat the very purpose of law and would render a written statutory provision for inherent powers under Section 482 CrPC/528 BNSS a mere waste paper work of the legislature and the words **'nothing in this Code/Sanhita shall be deemed to limit or affect the inherent powers of the High Court',** would lose their significance for all purposes.

PIOUS DUTY OF A JUDGE

20. Each case that comes before a Judge has an element of a

human problem concerning the life, liberty, livelihood, family, business, profession, work, shelter, safety and security of the citizen. Many of the litigants belong to the downtrodden and weaker sections of society who are defenceless, poor and ignorant. **What should be a Judge's response when the person who comes knocking at the doors of his court is a woman, child, old aged, infirm or disabled, having no resources to fight? The judiciary cannot remain a mere bystander or silent spectator but it must become an active participant in the judicial process ready to use law in the service of social justice through a proactive goal-oriented approach. Judges must remain alive to the socio-economic realities of Indian life to wipe every tear from every eye. Faith in the constitutional values and being always ready to use law as an instrument for achieving the goals of rendering justice, must be the sole objective.**

21. Judiciary being a very strong pillar of our Constitution, the object of the courts functional at any level, may be District Court, High Court or the Hon'ble Supreme Court, is to deliver justice; nothing more and nothing less. We would fail in our duty if we do not use the powers conferred upon us by the Legislature, another equally strong pillar of the Constitution, by self imposed restrictions upon us forgetting about the purpose for which we have been blessed to occupy the pious position as a Judge at any level. Purpose of any law cannot be to create problems for the society but to search out solutions to the same and once any occasion arises to exercise inherent powers under Section 482 CrPC or 528 BNSS or under any other provision of law where discretion also plays a significant role, such power should be exercised so as to discharge the pious obligation cast upon us by the framers of our Constitution.

WHEN DISTRICT COURTS ON SAME FACTS CAN ACQUIT THE ACCUSED, WHETHER HIGH COURT IS POWERLESS TO BURY THE LIS

22. It is often argued, as has also been argued in the present case,

that when the alleged victim, on oath, is supporting the cause and prayer of the applicant for quashing the proceedings under the POCSO Act, what course should be left open to be followed by the Courts. Learned AGA has submitted that the applicant should be put to full trial and it is only when the prosecution leads its evidence and the alleged victim/witness turns hostile before the trial court, order of acquittal can be passed by the trial court. Learned AGA has also submitted that when the offence giving rise to this case was committed, it was an offence and, therefore, based upon subsequent events, the proceedings cannot be quashed.

23. If the said analogy is accepted, then proceedings of no criminal case can be quashed either based upon compromise/settlement or upon the statement on oath made by the victim of the offence. Matters which are non-compoundable as per the provisions of CrPC/BNSS, regularly come before the courts and the High Courts working in all over the country regularly quash the proceedings of such criminal cases based upon settlement and the law in this regard is already well settled. While do so, it is not seen as to when the act prejudicial to the interest of the victim was committed by an offender, the same was an offence, rather what becomes significant is the intention of the parties to close the criminal litigation based upon the settlement. As to why such analogy should be applied only on pick and choose basis when quashing of proceedings is sought based upon compromise, is not understandable and, therefore, this Court is of the considered opinion that the High Court in exercise of inherent powers should focus only and only on securing the ends of justice in the given facts of the matter and should not restrict exercise of its inherent powers.

24. Where there is already a statement on oath by the alleged victim, made on affidavit in support of the prayers made in the application, ignoring the same and then putting the applicant to trial dragging both sides, i.e. prosecution and defence, for months and years

together for the purposes of getting recorded the statement of a hostile witness/prosecutrix/alleged victim, and then, based upon the same, waiting for the concerned court to pass a judgment of acquittal, would be an irony of fate. It would be surprising to see as to why precious time and resources of judicial system should be wasted in adopting such a recourse where result is bound to be the same, i.e., discharge/acquittal of the accused. Further, there are multiple practical difficulties faced and pains sufferred by the litigants in District Courts, to which at least this Court cannot turn its face. Compelling a lady in such matters to visit court premises for months and years for the purposes of getting her own husband acquitted where he is facing threat of punishment for doing some wrong with his wife which she does not admit, would be an instrument of harassment. Apart from making recurring expenditures and sometimes something over and above what is lawfully required, facing all evil eyes, criticism and all sorts of comments which may be against dignity of a woman, can also not be ignored. Therefore, if the Sessions Court can acquit an accused of a non-compoundable offence merely based upon the statement of a hostile victim/witness, as to why the High Court, at any stage of proceedings, cannot bury the lis by relying upon the similar statement of the alleged victim made on oath/affidavit or by appearing in person before the High Court itself, is something which is not understandable. Therefore, self imposed restrictions on exercise of inherent powers under the Code would defeat the very purpose of law.

CONCLUSION

25. In the present case, once matrimonial relationship between the applicant and the alleged victim pursuant to marriage solemnized after attaining the age of majority on 23.06.2025 and the same has been registered on 24.06.2025 under U.P. Marriage Registration Rules, 2017; the certificate of marriage is also on record and, further, the affidavit in support of the application has been filed by the alleged victim herself, it is a fit case where inherent powers under Section 528 BNSS should be

exercised, otherwise this Court would fail in its duty cast upon it by legislature to pass an order to secure ends of justice.

26. The application is, accordingly, **allowed**.

27. The proceedings of the aforesaid case are hereby **quashed**.

(Kshitij Shailendra, J)

November 21, 2025
AKShukla/-