



2025:AHC:207712

Reserved on 13.11.2025

Delivered on 20.11.2025

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 34844 of 2025

Wasiullah And 2 Others

.....Applicant(s)

Versus

State Of U.P. And 3 Others

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Vikas Yadav
Counsel for Opposite Party(s)	:	G.A.

Court No. - 78

HON'BLE VIVEK KUMAR SINGH, J.

1. Heard Shri Vikas Yadav, learned counsel for the applicants, Shri Ranu, learned counsel appearing for the opposite party no.2 as well as the learned AGA for the State of U.P.

2. Present application under Section 528 BNSS has been preferred by the applicants seeking quashing of the entire proceedings of Sessions Trial No.187 of 2017 (State vs. Wasiullah and Others), arising out of Case Crime No.64 of 2017, under sections 363, 366, 504, 506 of the Indian Penal Code, 1860 (in short 'IPC') and Section 7/8 of The Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') against the applicant no.1 and under Sections 504 and 506 IPC against the applicant nos.2 & 3, Police Station Bakhira, District Sant Kabir Nagar as well as impugned Chargesheet dated 16.03.2017 and Cognizance/Summoning order dated 23.03.2017, pending in the court of learned Special Court, POCSO Act, District-Sant Kabir Nagar.

3. The brief facts of the case are that the opposite party no.2/first informant lodged a first information report against the applicants on 19.01.2017 in respect of the alleged incident dated 30.12.2016. The first

information report was registered as Case Crime No.64 of 2017, under Sections 363, 366, 504, 506 IPC and Section 7/8 of the POCSO Act at Police Station Bakhira, District Sant Kabir Nagar, wherein allegation has been levelled by the informant/opposite party no.2 that her minor daughter has been enticed away by the applicant no.1 on 30.12.2016 at 5.00 PM and when he went to the house of applicant no.1, his other family members, including the applicants no.2 and 3, had hurled abuses and threatened him with dire consequences.

4. The Investigating Officer recovered the victim on 26.01.2017 and her statement was recorded under Section 161 of the Code of Criminal Procedure (in short 'Cr.P.C.'), wherein, she stated that she went with the applicant no.1 on her own will and she claimed herself to be a major girl. She further stated that she wanted to solemnize her marriage/Nikah with the applicant no.1. She lastly stated that her family members lodged a false first information report against the applicants. Even in her statement recorded under section 164 Cr.P.C, before the Magistrate on 09.03.2017, the victim had stated that she used to know the applicant no.1 and went to Mumbai with him and they stayed there for about 75 days. She clearly stated that no sexual intercourse had taken place between them and when she came to know about lodging of the FIR, she came back to her house.

5. The victim was medically examined on 28.01.2017 and as per report, no injury was found over the body of the victim, copy of the medical report has been appended at page 35 of the application. Thereafter, the victim was referred to the office of the Chief Medical Officer, Sant Kabir Nagar for ascertaining her age and as per report of the Chief Medical Officer dated 02.02.2017, the victim was aged about 18 years. Once the Investigating Officer recorded the statement of the victim and other witnesses, he submitted chargesheet in this case on 16.03.2017 and the learned Magistrate took cognizance vide his order dated 23.03.2017. Thereafter, the applicants challenged the proceedings of aforesaid Sessions Trial No.187 of 2017 before this Court and the matter was referred to Mediation and Conciliation Centre of this Court vide order dated 11.09.2025, where the parties amicably resolved their dispute and arrived at a compromise on 08.10.2025.

6. It is submitted by the learned counsel for the applicants that the applicants have been falsely implicated in the present case and a false FIR was lodged by the first informant /opposite party no.2 on 19.01.2017 against the applicants and the same was registered as Case Crime no.64/2017, under sections 363, 366, 504, 506 IPC, and Section 7/8 POCSO Act, Police Station Bakhira, District Sant Kabir Nagar regarding the alleged incident dated 30.12.2016. The Investigating Officer recorded the statement of the victim and collected other relevant evidences including the educational certificate and medical report of the victim. Thereafter, the victim was produced before the learned Magistrate for recording her statement under Section 164 Cr.P.C. and finally the Investigating Officer submitted a chargesheet in this case on 16.03.2017 and cognizance was taken by the learned Magistrate vide order dated 23.03.2017. Being aggrieved with the chargesheet dated 16.03.2017 and cognizance order dated 16.03.2017, the present application under section 528 BNSS has been filed by the applicants.

7. In paragraph no.11 of the application, it is stated that the applicant no.1 and the victim were in love but the first informant was against this relationship and they have solemnized Nikah against the wishes of the informant and a male child was born on 09.08.2018 (copy of the birth certificate has been appended as Annexure-7 to this application). After solemnizing Nikah, the applicant no.1 and the daughter of the opposite party no.2 are residing under the same roof and they are enjoying their matrimonial life. On the request of the learned counsel for the applicants, this Court had referred the present case to Mediation and Conciliation Centre of this Court, where the applicant no.1, opposite party no.2 (Informant) and his daughter/victim appeared and arrived at a settlement agreement dated 08.10.2025. As per settlement agreement report dated 08.10.2025 following settlement was arrived at between the parties hereto:-

"a) That both the parties appear before the Centre alongwith Kanis Fatima (wife of Wasiullah and daughter of first informant/ complainant) state that they have already settle their dispute amicably and they do not want to pursue the instant case in future also. The applicant no. 1 and Kanis Fatima produce the affidavits ' "

शपथपत्र' before the Centre and reiterate and reaffirm all the statements mentioned therein and further states that they have got married to each other and out of their wedlock, they have a male child namely, Sameer alias Mohd. Waziullah (aged about four years and six months) for which the first informant/ complainant have no objection in any manner whatsoever. The said affidavits 'शपथपत्र' produced by applicant no. 1 and Kanis Fatima (d/o complainant/ first informant) in original which are annexed (collectively) to this settlement agreement which shall be a part of this settlement agreement also.

b) That both the parties agree that they have no further claims or liabilities against each other and undertake not to contest any litigation in any manner whatsoever related to the instant dispute arising out of Case Crime No. 64 of 2017.

c) That both the parties agree that after entering into the instant settlement agreement, the parties hereinafter have no dispute with each other.

d) That both the parties agree that as of now they have no dispute against each other and they will move withdrawal applications in all the civil and dispute, before the concerned Court/authority."

8. As per the aforesaid report of mediation centre, the marriage of the applicant no.1 was solemnized with daughter of the first informant/opposite party no.2 and they were blessed with a male child, namely Sameer alias Mohd. Wasiullah and they are living a peaceful married life for the last several years. Learned counsel for the applicants further submitted that though the applicants are named and chargesheeted accused and they are also facing trial before the Trial Court in the aforementioned sessions case, however, in view of the facts and circumstances of the case that have now emerged on record, the criminal prosecution of the applicants cannot be sustained any further. As such, the present application is liable to be allowed by this Court.

9. Learned counsel appearing for the opposite party no.2/informant states that the informant has no objection if the proceeding of the present case is

quashed by this Court in pursuance of the aforesaid settlement agreement dated 08.10.2025. Both the contesting parties have arrived at a compromise and the opposite party no.2 has also pressed that the proceedings of the present case be quashed by this Court.

10. Learned AGA has opposed the prayer made by the applicants but could not dispute the fact that the marriage of the applicant no.1 has been solemnized with daughter of opposite party no.2/first informant and a child was born out of their wedlock. Learned AGA further submitted that since the prosecutrix was a child within the definition of the term "child" as defined in the POCSO Act, therefore, the subsequent development, if any, will not wipe out the criminality committed by the applicants as suggested by the learned counsel for the applicant. Referring to the judgment of the Hon'ble Apex Court in **State of Kerala vs. Hafsai Rahman, Special Leave Petition (Criminal) No.24362 of 2021** and **Ramji Lal Bairwa and Another vs. State of Rajasthan and Others, (2025) 5 SCC 117**, the learned AGA submitted that there can be no compromise in proceeding under the POCSO Act. Offence complained of against the accused/applicants is not only illegal but also immoral. Offence alleged to have been committed by the applicants is a heinous offence and amounts to an offence against society, as such, no interference is warranted by this Court in the present application and prayed for its dismissal.

11. I have heard rival submissions of the parties and perused the records.

12. Undoubtedly marriage of the applicant no.1 and daughter of the opposite party no.2 has been solemnized a long way back and a child was born on 09.08.2018. The married couple are living under the same roof for a very long time. The dispute has been settled by the parties in mediation and conciliation centre on 08.10.2025 and the contesting parties agreed to drop criminal proceedings including the present one.

13. Now, the question arises here as to whether the proceedings of a criminal case under sections 363, 366, 504, 506 IPC and Section 7/8 POCSO Act can be quashed by the High Court under section 482 Cr.P.C. or 528 B.N.S.S., if the parties have settled the dispute amicably and living

as husband-wife for a long period.

14. Reference may be made to the judgements of 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**, wherein, the Apex Court quashed the criminal prosecution of accused therein on the ground that accused had solemnized marriage with the prosecutrix and court cannot turn a blind eye to the said fact. In the submission of learned counsel for applicants, the ratio laid down by Apex Court in aforementioned judgements is squarely applicable to the facts of the present case. As such, no exception can be carved out in the case of present applicants with reference to the aforementioned judgements of Supreme Court inasmuch as the applicant no.1 has also solemnized marriage with the prosecutrix and the parties are happily living together. On the above conspectus, the learned counsel for applicants submits that the criminal prosecution of applicants cannot be sustained in law as well as fact and therefore, the same is liable to be quashed by this Court.

15. Be that as it may, the crux of the matter is that the parties have solemnized marriage and they are living together as husband and wife and a baby boy was born on 09.08.2018. The prosecutrix is now residing with the applicant no.1 as his legally wedded wife , no such material has been brought on record on the basis of which the marriage of the parties could be doubted. In view of the subsequent development, the criminality, if any, committed by the applicants now stands washed off. As such, no useful purpose would be served in prolonging the criminal prosecution of the applicants. On account of the facts as noted above, the chances of conviction of the applicants are now not only remote but also bleak. As such, in case the criminal prosecution of the applicants is allowed to continue, a happy family comprising of applicant no.1 and the prosecutrix shall stand broken. The trial would only entail loss of judicial time in a futile pursuit particularly when torrents of litigation drown the courts with an unimaginable flood of dockets.

16. The Apex Court in the case of **K. Dhandapani (supra)** and **Mafat Lal (Supra)** also quashed the proceedings against the accused therein on

the grounds that the accused had solemnized marriage with the prosecutrix and secondly, the court cannot turn a blind eye to the said fact. Since the judgement rendered by Apex Court in the case of **K. Dhandapani (supra)** is a short one, therefore, the same is reproduced in its entirety:

"Leave granted.

The appellant who is the maternal uncle of the prosecutrix belongs to Valayar community, which is a most backward community in the State of Tamilnadu. He works as a woodcutter on daily wages in a private factory. FIR was registered against him for committing rape under Sections 5(j)(ii) read with Section 6, 5(I) read with Section 6 and 5(n) read with Section 6 of Protection of Child from Sexual Offences (POCSO) Act, 2012. He was convicted after trial for committing the said offences and sentenced to undergo rigorous Reason: imprisonment for a period of 10 years by the Sessions Judge, Fast Track Mahila Court, Tiruppur on 31.10.2018. The High Court, by an order dated 13.02.2019, upheld the conviction and sentence. Aggrieved thereby, the appellant has filed this appeal.

Mr. M.P.Parthiban, learned counsel appearing for the appellant, submitted that allegation against him was that he had physical relations with the prosecutrix on the promise of marrying her. He stated that, in fact, he married the prosecutrix and they have two children.

The appellant submitted that this Court should exercise its power under Article 142 of the Constitution and ought to do complete justice and it could not be in the interest of justice to disturb the family life of the appellant and the prosecutrix.

After hearing the matter for some time on 08 th March, 2022, we directed the District Judge to record the statement of the prosecutrix about her present status. The statement of the prosecutrix has been placed on record in which she has categorically stated that she has two children and they are being taken care of by the appellant and she is leading a happy married life.

Dr. Joseph Aristotle S., learned counsel appearing for the State, opposed the grant of any relief to the appellant on the ground that the prosecutrix was aged 14 years on the date of the offence and gave birth to the first child when she was 15 years and second child was born when she was 17 years. He argued that the marriage between the appellant and the prosecutrix is not legal. He expressed his apprehension that the said marriage might be only for the purpose of escaping punishment and there is no guarantee that the appellant will take care of the prosecutrix and the children after this Court grants relief to him.

In the peculiar facts and circumstances of this case, 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.

For the aforesaid mentioned reasons, the conviction and sentence of the appellant is set aside in the peculiar facts of the case and shall not be treated as a precedent. The appeal is accordingly, disposed of. Pending application(s), if any, shall stand disposed of.

In case, the appellant does not take proper care of the prosecutrix, she or the State on behalf of the prosecutrix can move this Court for modification of this Order."

17. The Apex Court in the case of **Shriram Urav Vs. State of Chhattisgarh in Criminal Appeal No(S). 41/2021**, decided on 10.01.2025, also quashed the conviction as well as the sentence imposed upon the appellant on the ground that the appellant/accused and the complainant/victim had married each other.

18. Similarly, in the case of **Dasari Srikant vs. State of Telangana** reported in **(2024) SCC OnLine SC 936**, wherein, under identical circumstances and almost identical provisions the Supreme Court quashed

the proceedings instituted against the accused therein. The relevant paragraph 8 to 10 of the **Dasari Srikant (supra)** 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."

19. In another judgment of **Mahesh Mukund Patel vs. State of U.P. and Others**, reported in **2025 SCC OnLine SC 614**, the Hon'ble Supreme Court quashed the proceedings of offence, 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 that from the wedlock between the accused and the victim, two children were born, whose documents were produced alongwith the appeal. The Apex Court in this case quashed the proceedings on the ground 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.

20. The Supreme Court in another judgment of **Madhukar and Others vs. The State of Maharashtra and Another**, arising out of SLP (Criminal) No. 7212 of 2025, alongwith **Prabhakar vs. The State of Maharashtra and Another**, arising out of SLP (Criminal) No. 7495 of 2025, quashed the proceedings of case crime no.302 of 2023, dated 20.11.2023, under sections 324, 141, 143, 147, 149, 452, 323, 504 and 506 of the IPC as well as quashed the proceedings of case crime no.304 of 2023, dated 21.11.2023, under sections 376, 354-A, 354-D, 509 and 506

IPC on the basis of compromise between the parties. Paragraph nos.6, 7 and 8 of the said judgment are reproduced herein:-

"6. At the outset, we recognise that the offence under Section 376 IPC is undoubtedly of a grave and heinous nature. Ordinarily, quashing of proceedings involving such offences on the ground of settlement between the parties is discouraged and should not be permitted lightly. However, the power of the Court under Section 482 CrPC to secure the ends of justice is not constrained by a rigid formula and must be exercised with reference to the facts of each case.

7. In the present matter, we are confronted with an unusual situation where the FIR invoking serious charges, including Section 376 IPC, was filed immediately following an earlier FIR lodged by the opposing side. This sequence of events lends a certain context to the allegations and suggests that the second FIR may have been a reactionary step. More importantly, the complainant in the second FIR has unequivocally expressed her desire not to pursue the case. She has submitted that she is now married, settled in her personal life, and continuing with the criminal proceedings would only disturb her peace and stability. Her stand is neither tentative nor ambiguous, she has consistently maintained, including through an affidavit on record, that she does not support the prosecution and wants the matter to end. The parties have also amicably resolved their differences and arrived at a mutual understanding. In these circumstances, the continuation of the trial would not serve any meaningful purpose. It would only prolong distress for all concerned, especially the complainant, and burden the Courts without the likelihood of a productive outcome.

8. Therefore, having considered the peculiar facts and circumstances of this case, and taking into account the categorical stand taken by the complainant and the nature of the settlement, we are of the opinion that the continuation of the criminal proceedings would serve no useful purpose and would only amount to abuse of process."

21. In my considered opinion, the fact of the case of **Ramji Lal Bairwa (supra)** is distinguishable from the facts of the present case, inasmuch as,

in the present case the applicant no.1 and the victim have solemnized their marriage and a baby boy was born out of their wedlock and they are living a happy married life for the last several years and the opposite party no.2/first informant has also entered into settlement agreement before the Mediation Centre of this Court, and if the proceedings of the Trial Court is not quashed by this Court, the applicant no.1 and the victim and their family members may sustain legal injury. The ratio laid down by the Hon'ble Apex Court in the aforementioned judgments i.e. **Shriram Urav (supra), Mahesh Mukund Patel (supra), K. Dhandapani (supra) and Mafat Lal (supra)** is squarely applicable to the facts of the present case as the applicant no.1 has solemnized marriage with the prosecutrix and the parties are happily living together with their baby boy and this Court cannot ignore the said fact.

22. In view of the discussion made herein above, the present application succeeds and is liable to be allowed. It is accordingly **allowed**.

23. The entire proceedings of Sessions Trial No.187 of 2017 (State vs. Wasiullah and Others), arising out of Case Crime No.64 of 2017, under sections 363, 366, 504, 506 of the IPC and Section 7/8 of the The POCSO Act against the applicant no.1 and under Sections 504 and 506 IPC against the applicant nos.2 & 3, at Police Station Bakhira, District Sant Kabir Nagar as well as impugned Chargesheet dated 16.03.2017 and Cognizance/Summoning order dated 23.03.2017, pending in the court of learned Special Court, POCSO Act, District -Sant Kabir Nagar, are hereby quashed.

24. No order as to costs.

(Vivek Kumar Singh,J.)

November 20, 2025

Nitendra