2026:AHC:138606

AFR
Reserved on 13.05.2026
Delivered on 10.07.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 28703 of 2025

Rajvir And Another

.....Applicant(s)

Versus

State Of U.P. And 3 Others

.....Opposite Party(s)

Counsel for Applicant(s)	:	Anupama Parashar, Satendra Kumar Upadhyay
Counsel for Opposite Party(s)	:	Devesh Kumar Shukla, Dharmesh Kumar Shukla, G.A.

Court No. - 72

HON'BLE VIVEK KUMAR SINGH, J.

1. Heard Sri Satendra Kumar Upadhyay, learned counsel for the applicants, Sri Abhishek Kumar Shukla, Advocate holding brief of Sri Devesh Kumar Shukla, learned counsel for the opposite party no.2/ informant and Sri Prashant Kumar Singh, learned A.G.A. for the State.

2. The present application under Section 528 of B.N.S.S. has been filed for quashing the impugned order dated 17.02.2025 passed by the Special Judge (POCSO Act)/ Additional District and Session Judge, Aligarh in Session Trial No.288 of 2025 (State Versus Rajvir and another), arising out of Case Crime No.888 of 2023, under Sections 363, 366, 376D, 342 I.P.C. and Section 3/4 of POCSO Act, Police Station Atrauli, District Aligarh and the order dated 12.06.2025, whereby non-bailable warrant has been issued against the applicants.

3. The brief facts of the case are to the effect that a First Information Report was lodged against an unknown person on 23.12.2023 at 07:11 hours in respect of an alleged incident dated 21.12.2023 at 14:00 hours. The FIR was registered as Case Crime No.888 of 2023, under Sections 363 and 366 IPC at Police Station Atrauli, District Aligarh. It is alleged by the first informant in the FIR that she went to the market along with her daughter. While there, the victim/ daughter of the informant went to get some food but did not

return. It appears that an unknown person has enticed away the minor daughter of the first informant. The Investigating Officer recorded the statement of the first informant, who supported the prosecution case and provided the school certificate of the victim, wherein her date of birth was mentioned as 21.08.2008. Therefore, the victim was above 15 years of age at the time of the alleged incident.

4. The victim of the present case was recovered by the police on 13.01.2024 and her statement under Section 161 Cr.P.C. was recorded, wherein she stated that she was about 16 years of age and educated up to Class-8th. She went to the market along with her mother. She was forcibly kidnapped by the applicant no. 2 in a Maruti car. Thereafter, she was gang raped by both the applicants. The statement of the victim was recorded under Section 164 Cr.P.C. on 29.01.2024 and she again reiterated her earlier statement. She deposed in her statement that she was kidnapped by the applicant No. 1 on 21.12.2023 and she was kept inside a room where gang rape was committed by the applicants. She was set free on 12.01.2024.

5. The victim was medically examined on 13.01.2024 and no external or internal injury was seen on the body of the victim. She was advised for x-ray for age determination. As per the report of the Chief Medical Officer, Aligarh dated 16-01-2024, the victim was about 16-17 years of age.

6. The Investigating Officer recorded statements of the independent witnesses during the course of investigation. The independent witnesses stated that a false case was lodged by the first informant. Earlier, the husband of the present first informant had already lodged another FIR against the applicants alleging therein that his elder daughter was subjected to rape by the applicants. However, after due investigation, the case of rape was found to be false. Now, the present case has been lodged alleging therein that the younger daughter of the informant has been gang raped by the applicants. In fact, the victim stayed at the house of a relative, and a false story was concocted by the father of the victim. In fact, the applicants did not commit any offence as alleged by the victim.

7. The Investigating Officer collected the call detail records of the applicants and found that they were not present at the place of the incident at the relevant time. On the basis of mobile location, the Investigating Officer

opined that the applicant no.2-Dauji Ram was present in the Patparganj Industrial Area, New Delhi, and thereafter, on 21.12.2023, he was present in District Bulandshahr and again he returned to Anand Vihar, Delhi on 21.12.2023 at 20:33 hours. On 13.01.2024, the applicant no.2-Dauji Ram was present in Roorkee, Haridwar and Muzaffar Nagar.

8. The victim, as per her mobile location, was found in District Muzaffarnagar on 12.01.2024, and thereafter she was present in Haridwar on 13.01.2024. On the date of the alleged incident i.e. 21.12.2023, applicant no. 2 was present in District Bulandshahr, and on 13.01.2024, he was present in Roorkee, Haridwar and Muzaffarnagar. Similarly, applicant no.1- Rajvir was present in Khurja (Bulandshahr) on 21.12.2023. He was not present in Atrauli (Aligarh) on the date of the alleged incident i.e. 21.12.2023.

9. The Investigating Officer further recorded the statement of Dr. Prabhanshu Sharma, who stated that the applicant no. 1 had been working with him for the past three years, and his attendance record was also verified by the Investigating Officer. It was found by the Investigating Officer that the applicants were present in District Bulandshahr on the date of the alleged incident. Thereafter, the Investigating Officer submitted a final report in this case on 19.05.2024, mentioning therein that the applicants were not present in Atrauli (Aligarh) on the date of the alleged incident.

10. Being aggrieved by the submission of the final report dated 19.05.2024, the first informant/opposite party no. 2 filed a protest petition on 31.01.2025, wherein she prayed that the protest petition be accepted and the final report be rejected. She further prayed that the accused persons be summoned to face the criminal trial.

11. The learned trial court, after hearing the counsel for the informant, allowed the protest petition and summoned applicant no. 1 to face trial under Sections 376D and 342 IPC and Sections 3/4 of the POCSO Act, and applicant no. 2 under Sections 363, 366, 376D, and 342 IPC and Sections 3/4 of the POCSO Act, vide order dated 17.02.2025. It was observed by the learned trial court that the case would run as a State case inasmuch as the victim and the informant, in their statements recorded during the course of investigation, had supported the prosecution case and a prima facie case was made out against the applicants.

12. Being aggrieved by the order dated 17.02.2025, the applicants have filed the present application under Section 528 BNSS.

13. It is submitted by the learned counsel for the applicants that the applicants have been falsely implicated in the present case. The Investigating Officer, after due investigation, found that the applicants were falsely implicated and, therefore, no charge sheet was submitted against them. There is no direct or indirect evidence against the applicants to prosecute them in this case. The informant and her husband Kumar Pal used to lodge false cases against the applicants. Earlier an FIR No.144 of 2022 under Section 376-D IPC was registered against applicant Dauji Ram and his brother Bheesm at Police Station Pali Mukimpur, District Aligarh, wherein elder daughter of the informant, namely, Babita stated that a false case was registered by her family members. Therefore, final report no.34 of 2022 was filed on 12.08.2022. The informant has again lodged a false case against the applicants and there are ample evidence on recorded which makes it clear that the applicants were not present at the place of incident. The leaned court concerned has wrongly and illegally summoned the applicants to face criminal trial vide order dated 17.02.2025.

14. On the other hand, learned A.G.A. as well as the learned counsel for the prosecution have vehemently opposed the prayer and submitted that there is no illegality in the impugned order dated 17.02.2025. The victim, in her statements recorded under Sections 161 and 164 Cr.P.C., had categorically stated that she was subjected to rape by the applicants. In spite of that, the Investigating Officer wrongly and illegally submitted a final report in the case. There was sufficient evidence in the case diary against the applicants, and the learned trial court has rightly and correctly allowed the protest petition and summoned the applicants to face criminal trial. It is further submitted that there is no illegality, impropriety, or jurisdictional error in the impugned order dated 17.02.2025. Therefore, the present application lacks merit and is liable to be dismissed.

15. I have heard the rival submissions of learned counsel for the parties and perused the record.

16. Now this Court has to examine as to whether or not, the Magistrate may take cognizance of offence after submission of the final report by the

Investigating Officer. Before proceeding further, it is apposite to give reference to Section 190 Cr.P.C., which deals with conditions requisite for initiation of proceedings and also the power of the Magistrate to take cognizance under Section 190 Cr.P.C. Section 190 Cr.P.C. reads as under:-

> *"190. (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-*
>
> *(a) upon receiving a complaint of facts which constitute such offence;*
>
> *(b) upon a police report of such facts;*
>
> *(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed."*

17. If Magistrate finds that police has not made proper investigation and submitted final report then the following recourse is available to the concerned Magistrate. He may adopt any one of them as the fact and circumstances of the case may require.

> I. He may agree with the conclusion arrived at by the police, accept the report and drop the proceedings but before so doing, he shall give opportunity of hearing to the complainant.
>
> II. He may take cognizance under Section 190(1)(b) of Cr.P.C. and issue process straightaway to the accused without being bound by the conclusion of the Investigating Agency where he is satisfied upon the facts discovered or narrated by the police, there is sufficient ground to proceed.
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> III. He may order further investigation after he is satisfied that investigation was made in perfunctory manner.
>
> IV. Or he may without issuing process or dropping the proceedings may decide to take cognizance under Section 190(1)(a) upon the original complaint or protest petition treating the same as a complaint and proceed to examine the complainant and his witnesses under Section 200 Cr.P.C. and thereafter decide

whether complaint should be dismissed or process should be issued.

18. The Hon'ble Supreme Court in the case of **Minu Kumari and another Vs. State of Bihar and others 2006 (4) SCC 359** has held as under:-

"11. When a report forwarded by the police to the Magistrate under Section 173(2)(i) is placed before him several situations arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceeding, or (3) may direct further investigation under Section 156(3) and require the police to make a further report. The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he has again option of adopting one of the three courses open i.e., (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police under Section 156(3). The position is, therefore, now well-settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the Investigating Officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the Investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused. In this case Magistrate rightly summoned the accuse under Section 190(1)(b) Cr.P.C."

19. The Hon'ble Supreme Court in the case of **Sunil Bharti Mittal Vs. Central Bureau of Investigation 2015 (4) SCC 609**, has held as under:-

> *"... even if a person is not named as an accused by the police in the final report submitted, the Court would be justified in taking cognizance of the offence and to summon the accused if it feels that the evidence and material collected during investigation justifies prosecution of the accused (See **Union of India v. Prakash P. Hinduja and Anr. 2003 (6) SCC 195**). Thus, the Magistrate is empowered to issue process against some other person, who has not been charge-sheeted, but there has to be sufficient material in the police report showing his involvement. In that case, the Magistrate is empowered to ignore the conclusion arrived at by the investigating officer and apply his mind independently on the facts emerging from the investigation and take cognizance of the case. At the same time, it is not permissible at this stage to consider any material other than that collected by the investigating officer."*

20. The Hon'ble Supreme Court in the case of **Dr. Nupur Talwar Vs. C.B.I. Delhi & another, A.I.R. 2012 SC 87,** has held that where the Magistrate, while rejecting the final report submitted by Investigating Officer, has taken cognizance under Section 190(1)(b) Cr.P.C., the order of Magistrate should not be interfered with unless it is perverse or based on no material. The Superior Court should exercise utmost restraint and caution before interfering with an order of taking cognizance by the Magistrate otherwise the holding of trial will be stalled. The Superior Court should maintain this restrain to uphold the rule or law and sustain the faith of the common man in the administration of justice.

21. Reverting to the facts of the present case, the learned Magistrate has taken cognizance of the offence, considering the statements of the victim recorded during the course of investigation under Sections 161 and 164 Cr.P.C. No other material except the material collected by the Investigating Officer was taken into consideration.

22. The cognizance of the offence can be taken on the basis of the police reports as envisaged in Clause (b) of Section 190(1) Cr.P.C. irrespective of the opinion of the Investigating Officer that prima facie no case is made out, if the material collected and the statements of the witnesses recorded under

Section 161 Cr.P.C., in the opinion of the Magistrate, are sufficient to make out a prima facie case against the accused persons.

23. Thus the position is very clear and well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issuance of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and may take cognizance of the case, if he thinks fit in exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused.

24. The Investigating Officer did not submit charge-sheet in this case against the applicants on the basis of their call detail records and statements of some witnesses, who stated that the applicants were not present at the place of incident and they have been falsely implicated by parents of the victim due to ulterior motives. The plea of alibi was considered by the Investigating Officer and he completely ignored the statements given by the victim under Sections 161 and 164 Cr.P.C. The Investigating Officer committed gross illegality by filing final report, relying upon the statements of the witnesses who supported plea of alibi of the applicants. The investigation cannot unilaterally decide an alibi is true just because a few witnesses say so, especially if there is a prima facie evidence linking the accused to the crime.

25. In fact, the burden to prove the 'plea of alibi' is upon the accused, which they would do by way of adducing evidence in the trial proceedings and not by filing some affidavits or statements purported to have been recorded under Section 161 Cr.P.C. The inconsistency or contradictions in the statement of the witnesses, cannot be examined / appreciated at this stage.

26. The 'plea of alibi' can be proved by leading evidence in the trial court

and not by relying on the material collected by the Investigating Officer during the course of the investigation. In such a case, the prosecution would have to be given opportunity to cross-examine the defence witness to demonstrate that his testimony was not correct. This Court also in exercise of its inherent powers under Section 482 Cr.P.C. / 528 B.N.S.S. cannot consider the 'plea of alibi' of an accused at the stage of taking cognizance or framing of charges or summoning the accused. The applicant-accused will have ample opportunity to place their evidence including 'plea of alibi' at the appropriate stage.

27. Therefore, the 'plea of alibi' of the applicant cannot be considered at this stage in view of the settled law. The 'plea of alibi' taken by the defence is required to be proved only after prosecution has proved its case against the accused. In the present case, said condition is yet to come. The defence is at liberty to raise such plea before the trial court at the appropriate stage.

28. It is trite law that the power of quashing criminal proceedings should be exercised with circumspection and that too, in the rarest of rare cases and it was not justified for this Court in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the Final report or the complaint. A finding on the veracity of a material relied on by the prosecution in a case where the allegations levelled by the prosecution disclose a cognizable offence, is not a consideration for the High Court while exercising its power under Section 482 Cr.P.C. This view is fortified by the decision of the Apex Court in **Mahendra K.C. v. State of Karnataka and Ors. Reported in AIR 2021 SC 5711.**

29. In recent relevant judgement of the Apex Court in the case of **Shafiya Khan @ Shakuntala Prajapati vs. State of U.P.,** reported in **(2022) 4 SCC 549,** it was observed as under;-

> *"16. It is no doubt true that the power of quashing of criminal proceedings should be exercised very sparingly and with circumspection and that too in rarest of the rare cases and it was not justified for the Court in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the inherent powers do not confer any arbitrary jurisdiction on the Court to act according to its whims and fancies."*

30. In another judgment of the Apex Court in the case of **Ramveer Upadhyay and Another Vs. State of UP and another reported in 2022 SCC online SC 484**, it has been held as under:-

> *"39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under Section 482 of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Attrocities Act. Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. The Complaint Case No.19/2018 is not such a case which should be quashed at the inception itself without further Trial. The High Court rightly dismissed the application under Section 482 of the Cr.P.C."*

31. In view of the aforesaid, this Court finds that the submissions made by the learned counsel for the applicants call for adjudication on pure disputed questions of fact which may adequately be adjudicated upon only by the trial court and while doing so even the submissions made on points of law can also be more appropriately gone into by the trial court in this case. This Court does not deem it proper, and therefore cannot be persuaded to have a pre-trial before the actual trial begins. The prayer for quashing the entire proceedings is **refused** as I do not see any abuse of the Court's process either.

32. This Court, however, may clarify that whatever is said in this judgment is purely tentative and limited to the purpose of judging the worth of the prayer to quash the impugned orders. It is and ought not be regarded by the Trial Court as any kind of a comment or evaluation about evidence, which is yet to surface during trial. The truth of the prosecution case has to be

established beyond doubt at the trial in accordance with law. However, this Court is of opinion that this is not a case, where the prosecution ought to be scuttled at the threshold in the exercise of powers under Section 482 Cr.P.C./ 528 BNSS.

33. With the aforesaid observations, the present application under Section 528 BNSS is, accordingly, **dismissed**.

(Vivek Kumar Singh,J.)

July 10, 2026
Radhika

Digitally signed by :-
RADHIKA VISHWAKARMA
High Court of Judicature at Allahabad