



IN THE HIGH COURT OF KARNATAKA AT DHARWAD
DATED THIS THE 29TH DAY OF MAY, 2026
BEFORE
THE HON'BLE MRS JUSTICE GEETHA K.B.
CRIMINAL PETITION NO. 105298 OF 2025
(482(Cr.PC)/528(BNSS))

BETWEEN:

SOHAIL S/O. MAHAMMED GOUSE NASVALE,
AGE: 23 YEARS, OCC: COOLIE,
R/O: NEAR CIVIL HOSPITAL, ALNAVAR,
DIST: DHARWAD - 581 103.

...PETITIONER

(BY SRI. VENKATESH M. KHARVI, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
THROUGH ASHOK NAGAR
POLICE STATION, DHARWAD,
R/BY STATE PUBLIC PROSECUTOR,
DHARWAD - 580 001.
2. SMT. BIBI AFRIN NADAF W/O. NASHRAD NADAF,
AGE: 38 YEARS, OCC: TECHNICIAN,
R/O: GAVISIDDESHWAR COLONY,
GOPANAKOPPA, TQ: HUBBALLI,
DIST: DHARWAD - 580 023.

...RESPONDENTS

(BY SRI. JAIRAM SIDDI, HCGP FOR R1;
SRI. RAKESH S. HATTIKATAGI, ADV. FOR R2)

THIS CRIMINAL PETITION IS FILED U/S 528 OF BNSS,
PRAYING TO QUASHED ORDER PASSED BY II ADDL. DISTRICT
AND SESSION JUDGE DHARWAD AND SPECIAL COURT FOR
TRAI OF THE OFFENCES UNDER THE P.O.C.S.O. ACT AND SC
AND ST (P.O.A) ACT. DATED 23/08/2025, IN SPL CASE
NO-101/2024 FOR THE OFFENCES PUNISHABLE U/SEC 64 OF
THE BNS 2023, AND U/SECTION 4, 8 AND 12 OF THE POCSO





ACT. BY ALLOWING THE PETITION IN THE INTEREST OF JUSTICE AND EQUITY.

THIS CRIMINAL PETITION, COMING ON FOR ADMISSION THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MRS JUSTICE GEETHA K.B.

ORAL ORDER

Petitioner, respondent No.2 and victim are present before the Court and they are identified by their respective counsels. Learned counsels for petitioner and respondent No.2 have filed the application under Section 528 of Bharatiya Nagarik Suraksha Sanhita (for short, BNSS, 2023) r/w Section 359 of BNSS, 2023 praying for permission to compound the proceedings in Spl.Case.No.101/2024 registered for the offences punishable under Section 64 of Bharatiya Nyaya Sanhita (for short, BNS, 2023) and Sections 4, 8 and 12 of Protection of Children from Sexual Offences Act (for short, 'POCSO Act'), 2012. It is accompanied by the affidavits of the petitioner, respondent No.2 and the victim.



2. Heard both sides on the compromise petition and also on the main petition.

3. This is the petition filed under Section 528 of BNSS, 2023 seeking to quash the order dated 23.08.2025 passed in Spl.C.No.101/2024 and also praying for quashing the entire proceedings in Spl.Case.No.101/2024 on file of II Additional District and Sessions Judge, Dharwad and Special Court for Trial of the offences under POCSO Act and S.C and S.T (P.O.A) Act (In short, 'Special Court')

4. Brief facts alleged in the charge sheet are that the petitioner knowingly well that the victim is minor was following her, threatened her and forcibly touched her hands and body and kissed her, during September had physical contact with her; on 23.10.2024 at 03.00 a.m., he entered the house of first informant and took the victim on the top floor of the house, touched her hands and body and kissed her and forced her to have physical relationship with him and thereby committed the aforesaid offences.



5. Medical report produced along with charge-sheet clearly indicates that there is no history of penetrative sexual act on the victim. In the statement of victim under Section 183 of BNS, 2023 before the learned J.M.F.C., victim stated that there was no physical contact between her and the petitioner.

6. Only based on the statement being recorded by the Investigating Officer, the charge-sheet is filed alleging the offences punishable under Sections 4, 8 and 12 of POCSO Act, 2012, R/w Section 64 of BNS, 2023 against the petitioner.

7. To attract the offence under Section 4, there shall be penetrating sexual assault which is defined in Section 3 of POCSO Act, 2012, which reads as follows:

"3. Penetrative sexual assault.—A person is said to commit "penetrative sexual assault" if—

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or



anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person."

8. There is no allegation in the statement of victim recorded under Section 183 of BNSS, 2023 by the learned Magistrate regarding the ingredients of Section 3 of POCSO Act, 2012. Further, the medical report of the doctor does not indicate such incident. Only if penetrative sexual assault as defined under Section 3 is committed



against the victim; then it is punishable under Section 4 of POCSO Act, 2012, which is lacking in this case.

9. The remaining offences alleged against petitioner are punishable under Sections 8 and 12 of POCSO Act, 2012. Section 8 would be attracted, if any person commits sexual assault. Sexual assault is defined under Section 7 of POCSO Act, 2012, which reads as follows:

"7. Sexual assault.—Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault."

10. If a sexual assault is committed against any child, then it is punishable under Section 12 of POCSO Act, 2012. Child is defined under Section 2(d) of the POCSO Act, 2012. According to it, the child means 'any person below the age of 18 years'.



11. Apparently, the victim was below the age of 18 years as on the date of alleged incident. This alleged incident had taken place on 23.10.2024 at 03.00 a.m., on the top floor of the house of first informant. If sexual assault against a child is established, then it is punishable under Section 12 of the POCSO Act, 2012 as discussed above.

12. In an instant case, it is not the case of prosecution that the accused has touched the vagina or breast of the child or makes the child to touch his penis or anus or does any other act with sexual intent which involves physical contact without penetration.

13. The only allegation in the present case is that, accused has kissed the minor victim and there is no other allegation against the petitioner. Even though, there is mention in the charge sheet that during September, once petitioner had physical relationship with the victim, the same is not substantiated by medical evidence. Further, the date, time or place of such incident is not mentioned in



the charge-sheet. As discussed above, already the victim has stated before the learned J.M.F.C., that there is no physical contact between her and the petitioner, but the petitioner came to her house at 03.00 a.m. which is evidenced by others.

14. Under these circumstances, apparently the offences under Sections 4, 8 and 12 of POCSO Act, 2012 would not be attracted. When Sections 4 and 6 of POCSO Act, 2012 are not attracted, then the offence under Section 64 of the BNS, 2023 could also be not attracted.

15. The alleged offences under Sections 4, 8 and 12 of POCSO Act, 2012 R/w Section 64 of BNS, 2023 are non-compoundable in nature. Even then, this Court can exercise its inherent powers under Section 528 of BNSS, 2023. In this regard, this Court places reliance on the judgment of Hon'ble Supreme Court in case of ***Gian Singh v. State of Punjab & Another***, reported in **(2012) 10 SCC 303** wherein, at paragraph No.61 held as follows:



"61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz. : (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are



not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominately civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be



caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

16. Thus, the powers that this court can exercise under Section 528 of BNSS, 2023 is distinct and different from the powers that exercised by criminal courts under Section 359 of BNSS, 2023. However, such powers are to be exercised judiciously to secure the ends of justice and to prevent abuse of process of court.



17. The Hon'ble Apex Court in case of ***Madhukar & Ors. Vs. The State of Maharashtra and Another*** in paragraph Nos.6 and 7 held as follows:

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.

18. Considering the above principles noted in all the above citations, this Court is of the opinion that this Court can exercise its power under Section 528 of BNSS, 2023 even for the offences which are not covered under Section 359 of BNSS, 2023. Thus, inherent power under Section 528 of BNSS, 2023 can be exercised to quash criminal proceedings if the Court is of the considered opinion that continuation of criminal case is not in the interest of parties and on the other hand ends of justice would be secured, if criminal proceedings are quashed.



19. As discussed above, when the ingredients of Sections 4, 8 and 12 POCSO Act, 2012 and Section 64 of BNS, 2023 are not attracted from the facts of the case and when parties have already entered into the compromise, there is no need to continue the criminal proceedings against petitioner. Even though, the offences alleged against petitioner are grave and heinous in nature, the continuation of these proceedings would not require, because as discussed above the ultimate result of continuation of proceedings would be chances of acquittal of the petitioner only, as there is no medical evidence and statement of the victim before the learned JMFC. Thus, the criminal proceedings initiated against petitioner are to be quashed to prevent abuse of the process of the Court.

20. For the above reasons, this Court pass the following:



ORDER

- i) The petition filed under Section 528 of BNS, 2023 is **allowed**.
- ii) Proceedings against petitioner in Crime No.85/2024 which is resulted in Special Case No.101/2024 on the file of II Additional District and Sessions Judge, Dharwad and Special Court for Trial of the offences under POCSO Act and S.C and S.T (P.O.A) Act for the offences punishable Sections 4, 8 and 12 of POCSO Act, 2012 and Section 64 of BNS, 2023 are hereby quashed.
- iii) All pending applications, if any, shall stand disposed of.

Sd/-
(GEETHA K.B.)
JUDGE

RKM:Para 1 to 4
SSP:Para 5 to end,
CT: ASC List No.: 1 Sl No.: 22