

THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Jurisdiction)

DATED : 2nd June, 2025

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

Crl.M.C. No.01 of 2025

Petitioners : Deepam Pradhan and Others

versus

Respondents : Krishna Kumari Bhandari and Others

Application under Section 528 of the
Bharatiya Nagarik Suraksha Sanhita, 2023

Appearance

Mr. Rahul Rathi, Advocate for the Petitioners.
Mr. M. N. Dhungel, Advocate for the Respondents No.1 and 2.
Mr. Yadev Sharma, Additional Public Prosecutor with Mr. Sujan Sunwar, Assistant Public Prosecutor for the State-Respondent No.3.

ORDER

Meenakshi Madan Rai, J.

- 1.** The present Petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, "BNSS"), seeks quashing of Pakyong PS Case, FIR No.31 of 2022, dated 16-08-2022 and criminal proceedings in General Register Case No.208 of 2024 (*State of Sikkim vs. Deepam Pradhan and Others*), pending before the Court of the Learned Chief Judicial Magistrate, Pakyong.
- 2.** Learned Counsel for the Petitioners submitted that, the aforementioned FIR arose out of a land dispute between the Petitioners herein and the two Private Respondents, who are boundary holders of landed property situated adjacent to each other. The Respondent No.1 filed the FIR at the Pakyong Police Station, on 16-08-2022, alleging that on 13-08-2022 the Petitioners No.1, 4, 5, 7 and their domestic help came to the house of the Respondents

No.1 and 2 and started breaking down the brick wall and also assaulted them. The FIR was registered against the said Petitioners under Sections 447/323/354/120B of the Indian Penal Code, 1860 (for short, "IPC"). On completion of investigation, Charge-Sheet was submitted against the Petitioner No.1 under Sections 442/448/452/351/354/120B/34 of the IPC and against the Petitioners No.2 to 7 under the same Sections, except Section 354 IPC and included Sections 323 and 426 of the IPC, in the said Magisterial Court. The case was registered in the Court as General Register Case No.208 of 2024. Charges were framed against the Petitioner No.1 under Sections 323/452/351/426/120B/354/34 of the IPC and against the Petitioners No.2 to 7 under Sections 323/452/351/426/120B/34 of the IPC. The parties have now settled their respective claims over the suit land and resolved their civil dispute amicably, in Title Suit No.01 of 2022, vide Compromise Deed, dated 21-12-2024[Annexure P9 (colly)], between Respondent No.2 and Petitioner No.5 and other Government Agencies. The Compromise Deed [Annexure P10 (colly)] also dated 21-12-2024, was executed between Petitioner No.5 and Respondent No.2, in Title Suit No.38 of 2022. Pursuant to the Compromise Deeds, dated 21-12-2024 (*supra*), Decree dated 01-02-2025, were issued, individually [Annexure P9 (colly) and Annexure P10 (colly)], in both the Title Suits (*supra*).

3. After the settlement of the civil disputes, the Petitioners and the Respondents settled the disputes involving General Register Case No.208 of 2024 by duly executing a Settlement Deed/Agreement, dated 04-02-2025 [Annexure P11 (Colly)], executed between the Respondents and the Petitioners, whereby they have jointly agreed not to pursue the matter before the

Magisterial Court, to maintain cordial relations with each other and peace and harmony in society. That, the instant Petition is being filed as some of the offences under which the Petitioners were booked and Charges framed against them under the IPC are non-compoundable offences. Learned Counsel urges this Court to exercise its jurisdiction under Section 528 of the BNSS to quash the FIR No.31 of 2022 as well as the above-mentioned trial in General Register Case No.208 of 2024 on the strength of the Compromise Deed/Settlement Deed/Agreement [Annexure P11 (Colly)] to secure the ends of justice and to prevent abuse of the process of the Court.

4. Learned Additional Public Prosecutor has no objection to the prayers put forth by the Petitioners as the parties have amicably resolved their differences which essentially arose out of a civil dispute and was therefore of a private nature. However, the Petition has been erroneously filed under Section 528 of the BNSS, whereas it ought to have been under Section 482 of Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") in view of the fact that the BNSS came into force only on 01-07-2024 and the FIR which is sought to be quashed is dated 16-08-2022. Thus, the maintainability of the Petition is questioned by the Learned Additional Public Prosecutor.

5. Having heard Learned Counsel for the parties, the argument of Learned Additional Public Prosecutor regarding the correct provision of law that ought to have been invoked is being addressed first.

6. The BNSS came into force with effect from 01-07-2024, vide Notification dated 23-02-2024, in terms of Section 1(3) of the BNSS. Consequently, the Criminal Procedure Code, 1973, stood

repealed immediately. Section 531 of the BNSS is extracted hereinbelow for clarity;

"531. Repeal and savings.—(1) The Code of Criminal Procedure, 1973 (2 of 1974) is hereby repealed.

(2) Notwithstanding such repeal—

- (a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force;
- (b) all notifications published, proclamations issued, powers conferred, forms provided by rules, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the said Code and which are in force immediately before the commencement of this Sanhita, shall be deemed, respectively, to have been published, issued, conferred, specified, defined, passed or made under the corresponding provisions of this Sanhita;
- (c) any sanction accorded or consent given under the said Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have been accorded or given under the corresponding provisions of this Sanhita and proceedings may be commenced under this Sanhita in pursuance of such sanction or consent.

(3) Where the period specified for an application or other proceeding under the said Code had expired on or before the commencement of this Sanhita, nothing in this Sanhita shall be construed as enabling any such application to be made or proceeding to be commenced under this Sanhita by reason only of the fact that a longer period therefor is specified by this Sanhita or provisions are made in this Sanhita for the extension of time."

Thus, a careful reading of Section 531 of the BNSS would indicate that, if any appeal, application, trial, inquiry or investigation is pending when the BNSS comes into force, then such matters shall

be disposed of, continued, held or made as per the provisions of the Cr.P.C. The meaning of the sentences needs no further elucidation being self-explanatory. Suffice it to comprehend consequently that, any appeal/**application**/trial/inquiry/investigation, instituted on or after 01-07-2024, has to be considered in terms of the provisions of the BNSS.

7. In this context, we may relevantly look at Section 4(2) of the BNSS which lays down that all offences under “*any other law*” shall be investigated, inquired into, tried and otherwise dealt with according to the “*same provisions*”. The wordings (*supra*) in the provision indicates a reference to the BNSS. There is therefore no error in the Petition having been filed under Section 528 of the BNSS in light of the provisions of Section 4(2) and Section 531 of the BNSS. On the enforcement of the BNSS, all new matters are to be proceeded under the new law, thereby rendering redundant the provisions of Section 482 of the Cr.P.C. for the instant purposes.

8. In this context, the Delhi High Court in ***Prince vs. State of Govt of NCT of Delhi & Ors.***¹ was of a similar view, the Court was dealing with a Petition filed under Section 438 read with Section 482 of the Cr.P.C. in an FIR registered on 18-05-2024. The Court opined that since the Petition had been filed after 01-07-2024, it ought to have been filed under the BNSS and not the Cr.P.C. Similarly, the Punjab and Haryana High Court in ***XXXXXX vs. State of U.T. Chandigarh and Another***² was considering a Petition under Section 482 of the Cr.P.C. When the Public Prosecutor raised a preliminary objection regarding the maintainability of the Petition in view of the BNSS coming into force on 01-07-2024, the High Court discussed

¹ Bail Appln. 2399 of 2024, decided on 12-07-2024 : Law finder Doc Id # 2617130 : 2024(261)AIC 499

² CRM-M-31808 of 2024, decided on 11-07-2024 : Law Finder Doc Id # 2612242 : 2024 NCPHC 85784

the provisions of Section 531 and Section 4(2) of the BNSS and concluded that there is no ambiguity in the legislative intent contained in the said provisions and explained thus;

"9.

II. The provisions of Section 4 and Section 531 of BNSS, 2023 are mandatory in nature as a result whereof any appeal/application/revision/petition/trial/inquiry or investigation pending before 01.07.2024 are required to be disposed of, continued, held or made (as the case may be) in accordance with the provisions of Code of Criminal document Procedure, 1973. In other words; any appeal/application/revision/petition filed on or after 01.07.2024, is required to be filed/instituted under the provisions of BNSS, 2023."

9. It stands to reason, from a bare reading of the provisions (*supra*) that, the instant Petition would be one under Section 528 of the BNSS and not under Section 482 of the Cr.P.C. No error arises on this facet on the part of the Petitioners and the Petition is maintainable.

10. That having been said, it is clear that the FIR and the General Register Case were the outcome of the civil dispute between the parties. The Supreme Court in ***Gian Singh vs. State of Punjab and Another***³ while examining the powers of the High Court under Section 482 of the Cr.P.C. opined that;

"58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes

³ (2012) 10 SCC 303

have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. **However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed.**

59. *B.S. Joshi* [(2003) 4 SCC 675], *Nikhil Merchant* [(2008) 9 SCC 677], *Manoj Sharma* [(2008) 16 SCC 1] and *Shiji* [(2011) 10 SCC 705] do illustrate the principle that the High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power under Section 482 of the Code and Section 320 does not limit or affect the powers of the High Court under Section 482. Can it be said that by quashing criminal proceedings in *B.S. Joshi* [(2003) 4 SCC 675], *Nikhil Merchant* [(2008) 9 SCC 677], *Manoj Sharma* [(2008) 16 SCC 1] and *Shiji* [(2011) 10 SCC 705] this Court has compounded the non-compoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an offence under Section 320 and quashing of a criminal case by the High Court in exercise of inherent power under Section 482. The two powers are distinct and different although the ultimate consequence may be the same viz. acquittal of the accused or dismissal of indictment.

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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.” [emphasis supplied]

(i) In *K. Bharthi Devi and Another vs. State of Telangana and Another*⁴ the Supreme Court held that;

“34. It has been held that there are certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or a family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, the High Court would be justified in quashing the criminal proceedings, even if the offences have not been made compoundable.”

11. At this juncture, it may appositely be clarified that Section 528 of the BNSS employs the same language as that of Section 482 of the Cr.P.C., except that the word ‘Code’ appears in Section 482 Cr.P.C. and ‘Sanhita’ in Section 528 BNSS. The Sections are juxtaposed hereinbelow for the purpose of clarifying that precedents cited hereinabove, which are relevant under Section 482 Cr.P.C., would also be relevant for the purposes of Section 528 BNSS;

<u>The Code of Criminal Procedure, 1973</u>	<u>The Bharatiya Nagarik Suraksha Sanhita, 2023</u>
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.

⁴ (2024) 10 SCC 384

12. On the bedrock of the observations of the Supreme Court extracted hereinabove and the matter between the disputing parties having indubitably arisen out of a civil dispute between them as neighbours, I am of the considered view that this is a fit case where this Court can exercise its jurisdiction under Section 528 of the BNSS and quash the FIR and the proceedings before the Learned Trial Court.

13. Consequently, Pakyong PS Case FIR No.31 of 2022, dated 16-08-2022, and all proceedings before the Chief Judicial Magistrate, Pakyong District, in General Register Case No.208 of 2024 stand quashed.

14. Crl.M.C. stands disposed of accordingly.

15. Pending applications, if any, also stand disposed of.

(Meenakshi Madan Rai)
Judge
02-06-2025

Approved for reporting : **Yes**

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