

THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Jurisdiction)

DATED : 23rd September, 2025

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

Crl.M.C. No.03 of 2025

Petitioners : Raj Kumar Chettri and Another

versus

Respondent : State of Sikkim

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

Appearance

Mr. M. N. Dhungel, Advocate for the Petitioner No.1.
Mr. Bhusan Nepal, Advocate (Legal Aid Counsel) for the Petitioner No.2.
Mr. Sujan Sunwar, Assistant Public Prosecutor for the Respondent.

ORDER (ORAL)

Meenakshi Madan Rai, J.

- 1.** The Petitioners No.1 and 2 have filed a Petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter, the "BNSS"), afresh, along with Settlement Deed/Agreement executed between them on 01-07-2025.
- 2.** Learned Counsel for the Petitioner No.1 and Learned Counsel for the Petitioner No.2 submit that, the Petitioners have amicably settled the matter amongst themselves and seek quashing of the FIR before the Rangpo Police Station registered as Rangpo PS FIR Case bearing No.25/2024, dated 24-04-2024, against the Petitioner No.1 by the Petitioner No.2 for physically assaulting her with an iron rod on 23-04-2024.
- (i)** They also seek quashing of the consequent Charge-sheet filed against the Petitioner No.1 under Sections 323, 324 and

498A(a) of the Indian Penal Code, 1860 (hereinafter, the "IPC"), being GR Case No.03 of 2025 (*State of Sikkim vs. Raj Kumar Chettri*), pending before the Court of the Judicial Magistrate, Rangpo Sub-division, Sikkim, wherein charges have been framed against the Petitioner No.1 under Sections 323, 324 and 498A of the IPC.

3. Learned Assistant Public Prosecutor has no objection to the aforesaid Petition, subject to the condition that Petitioner No.1 shall abide by all the terms and conditions mentioned in the Settlement Deed/Agreement dated 01-07-2025.

4. Before embarking on a discussion and decision on the merits of the matter, it is imperative to point out that Section 528 of the BNSS deals with the saving of inherent powers of High Court and provides as follows;

"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."

(i) On this facet while reverting to the provisions of Section 482 of the Code of Criminal Procedure, 1973 (hereinafter, the "Cr.P.C."), it is evident that the same language was employed therein save to the extent that, Section 482 of the Cr.P.C. mentions 'Code' while Section 528 of the BNSS mentions 'Sanhita'. Regardless, it is evident that Section 528 of the BNSS deals with inherent powers of the High Court to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Suffice it to clarify here that the Cr.P.C., 1973, has since been repealed and replaced by the BNSS hence the foregoing discussions.

(ii) It is seen that the Petitioner No.1 has been charged under the offences under Sections 323, 324 and 498A of the IPC.

(iii) A perusal of Section 320 of the Cr.P.C indicates that Section 323 of the IPC is compoundable by the person to whom the hurt has been caused, however it is evident that the offences under Section 324 and Section 498A of the IPC are not compoundable under Section 320 of the Cr.P.C.

(iv) The Supreme Court in ***Shiji alias Pappu and Others*** vs. ***Radhika and Another***¹ has expressed the view that simply because an offence is not compoundable under Section 320 of the Cr.P.C. is by itself no reason for the High Court to refuse exercise of its powers under Section 482 of the Cr.P.C. The power under the said provision can be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be in futility. The Supreme Court also distinguished between compounding of offences by the parties before the Trial Court or in Appeal and the exercise of power by the High Court to quash the Prosecution under Section 482 of the Cr.P.C. It was expounded that while a Court trying an accused or hearing an Appeal against conviction, may not be competent to permit compounding of an offence based on a settlement arrived at between the parties, in cases where the offences are not compoundable under Section 320 of the Cr.P.C., the High Court may quash the Prosecution even in cases where the offences with which the accused has been charged are non-compoundable. The inherent powers of the High Court under Section 482 of the Cr.P.C. are not for that purpose controlled by Section 320 of the Cr.P.C.

5. That having been said, as can be culled out from the submissions of Learned Counsel for the Petitioner No.1 and Learned

¹ (2011) 10 SCC 705

Counsel for the Petitioner No.2 and perusal of the FIR, the Petitioner No.1 (husband) had physically assaulted the Petitioner No.2 with an iron rod in the presence of her children Diya Pradhan, aged about nineteen years and Tiana Chettri, aged about five years, upon which she lodged the FIR, having sustained injuries. She had also complained of a previous similar incident, which had occurred on 11-08-2020. It is submitted that, now the parties are living together in harmony, along with their children and the wife does not seek to pursue the Prosecution. That, the Petitioner No.1 has also agreed not to repeat the physical acts of assaulting the Petitioner No.2 and to adhere by the terms of the Deed of Agreement earlier arrived at between them on 26-11-2024, executed during the settlement of the Domestic Violence Case No.02 of 2024 and the Settlement Deed/Agreement executed between them on 01-07-2025. The Petitioner No.2 has also agreed not to pursue the Complaint and to maintain mutual respect and cordial relations with each other.

(i) I am of the considered view that the dispute is essentially of a personal nature, being one between husband and wife. At this juncture, it is relevant to point out that the exercise of power under Section 528 of the BNSS is for the purpose of securing the ends of justice and to prevent the abuse of the process of Court. The Court would be justified in allowing the Petition under Section 528 of the BNSS if it is of the view that the facts and circumstances of the case reveal that, there would be no evidence whatsoever to convict the accused as the Complainant has herself agreed to compromise the matter and not pursue the Prosecution.

6. In light of the facts and circumstances before this Court, I am of the considered view that this is a fit case where the power of

Raj Kumar Chettri and Another vs. State of Sikkim

this Court under Section 528 of the BNSS can be exercised for the ends of justice. The Rangpo PS FIR Case bearing No.25/2024, dated 24-04-2024 and GR Case No.03 of 2025 (*State of Sikkim vs. Raj Kumar Chettri*), pending before the Court of the Judicial Magistrate, Rangpo Sub-division, Sikkim, accordingly stand quashed.

7. Petition is allowed and disposed of accordingly.

(Meenakshi Madan Rai)
Judge
23-09-2025

Approved for reporting : **Yes**

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