

**THE HIGH COURT OF SIKKIM : GANGTOK**  
(Criminal Jurisdiction)

DATED : 22<sup>nd</sup> September, 2025

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

Crl.M.C. No.04 of 2025

**Petitioners** : Tabita Sunar and Another

**versus**

**Respondent** : State of Sikkim

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

**Appearance**

Ms. Marina Rai, Mr. Lekden Thondup Basi and Ms. Dipsheekha Manger, Advocates for the Petitioners.

Mr. Sujan Sunwar, Assistant Public Prosecutor for the Respondent.

**ORDER (ORAL)**

Meenakshi Madan Rai, J.

**1.** The instant application has been filed by the Petitioners No.1 and 2 under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter, the "BNSS"), seeking quashing of the FIR bearing Case No.0009/2024, lodged before the Mangan Police Station, by Petitioner No.1 against the Petitioner No.2 for commission of the offences under Section 326 of the Indian Penal Code, 1860 (hereinafter, the "IPC"), read with Sections 184 and 185 of the Motor Vehicles Act, 1988 (hereinafter, the "MV Act") and GR Case No.06 of 2024 (*State of Sikkim vs. Lachu Rasaily*), pending before the Court of the Chief Judicial Magistrate, Mangan District, Sikkim, wherein charges have been framed against the Petitioner No.2 under Section 326 of the IPC, read with Sections 184 and 185 of the MV Act.

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**2.** It is submitted by Learned Counsel for the Petitioners that, Petitioners No.1 and 2 are husband and wife and they have a minor child aged about five years. That, post the incident they are living together and the Petitioner No.2 has been taking care of the Petitioner No.1 as well as their minor child financially and otherwise. That, the parties have entered into a Compromise Deed dated 18-09-2025, whereby the Petitioner No.2 undertakes *inter alia* not to assault the Petitioner No.1 or to harass, abuse or ill-treat her, in any manner whatsoever. That, the Petitioner No.2 intends to ensure peace and harmony between the parties.

**3.** Learned Assistant Public Prosecutor has no objection to the Petition subject to the condition that Petitioner No.2 shall abide by all the terms and conditions mentioned in the Compromise Deed dated 18-09-2025.

**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 has been 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, like the previous Section 482 of the Cr.P.C. (since repealed and replaced by the BNSS) deals in the exact same language, with inherent powers

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of the High Court to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

**5.** That, having been clarified, from the submissions advanced by Learned Counsel for the parties, it is evident that the facts are not in dispute. Consequently, it would be necessary to examine the views of the Supreme Court on the scope of inherent powers of the High Court under Section 482 of the Cr.P.C. which as earlier stated is now Section 528 of the BNSS. In ***B. S. Joshi and Others*** vs. ***State of Haryana and Another***<sup>1</sup>, the Supreme Court held as follows;

**"10.** In *State of Karnataka v. L. Muniswamy* [(1977) 2 SCC 699] considering the scope of inherent power of quashing under Section 482, this Court held that in the exercise of this wholesome power, the High Court is entitled to quash proceedings if it comes to the conclusion that the ends of justice so require. It was observed that in a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice and that the ends of justice are higher than the ends of mere law though justice had got to be administered according to laws made by the legislature. This Court said that the compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction. On facts, it was also noticed that there was no reasonable likelihood of the accused being convicted of the offence. **What would happen to the trial of the case where the wife does not support the imputations made in the FIR of the type in question.** As earlier noticed, now she has filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. **There may be many reasons for not supporting the imputations. It may be either for the reason that she has resolved disputes with her husband and his other family members and as a result thereof she has again started living with her husband with whom she earlier had differences or she has willingly parted company and is living happily on her own or has married someone else on the earlier marriage having been dissolved by divorce on consent of parties or fails to support the prosecution on some other similar grounds.** In such eventuality, there would

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<sup>1</sup> (2003) 4 SCC 675

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almost be no chance of conviction. Would it then be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences? The answer clearly has to be in the "negative". It would, however, be a different matter if the High Court on facts declines the prayer for quashing for any valid reasons including lack of bona fides."

[emphasis supplied]

**6.** There are a plethora of other decisions by the Supreme Court on the same facet which are not being cited to prevent prolixity. In the instant case the dispute is personal, the Petitioner No.2 (husband) had assaulted the Petitioner No.1 (wife), who thereupon went and lodged the FIR against the Petitioner No.2. Now, admittedly they are in a cordial family relationship and living together, along with their minor child. In my considered view, it would be an exercise in futility to continue with the matter, as evidently the Petitioner No.1 would not support the imputations made by her in the FIR against the Petitioner No.2.

**7.** Pausing here momentarily, it is essential to notice that one of the sections under which Charge is framed against the Petitioner No.2 is Section 326 of the IPC. In this circumstance, the Supreme Court in ***Shiji alias Pappu and Others* vs. *Radhika and Another***<sup>2</sup> has expressed the view that simply because an offence is not compoundable under Section 320 of the Cr.P.C., it 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 conviction against the accused and the entire exercise of trial is destined to be an exercise in futility. The Supreme Court also distinguished between the 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 proceedings under Section 482 of the

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<sup>2</sup> (2011) 10 SCC 705

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Cr.P.C. on the other. 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. (now Section 359 of the BNSS). That, thereby quells any doubts on the inherent powers under Section 482 of the Cr.P.C. (now Section 528 of the BNSS).

**8.** In conclusion, in the interest of justice, to prevent the abuse of the process of the Court and to secure the ends of justice and to enable both the Petitioners to continue living in a cordial harmonious atmosphere and more especially to ensure that the child does not become the victim of acrimony in the family, FIR bearing Case No.0009/2024 (*supra*) and the resultant GR Case No.06 of 2024 (*State of Sikkim vs. Lachu Rasaily*) pending in the Court of the Chief Judicial Magistrate, Mangan District, Sikkim, are both hereby quashed. A copy of the Deed of Compromise be kept in the records of this case.

**9.** Petition is allowed and disposed of.

**( Meenakshi Madan Rai )**

**Judge**

22-09-2025

Approved for reporting : **Yes**