



2026:AHC:59482

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 5300 of 2026

Nischal Gupta @ Devu

.....Applicant(s)

Versus

State Of U.P. And 3 Others

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Mithilesh Kumar Shukla
Counsel for Opposite Party(s)	:	Rajendra Kumar Srivastava, G.A.

Court No. - 80

HON'BLE VIVEK KUMAR SINGH, J.

1. Heard Sri Mithilesh Kumar Shukla, learned counsel for the applicant, Sri Siddharth Srivastava, Advocate holding brief of Sri Rajendra Kumar Srivastava, learned counsel for the opposite party no. 2 and learned A.G.A. for the State.
2. Earlier on 09.02.2026, the learned counsel for the applicant was directed to file supplementary affidavit bringing on record the certificate of marriage and compromise between the accused-applicant and victim, who were stated to be husband and wife.
3. In pursuance of earlier order dated 09.02.2026, the supplementary affidavit has been filed today by the learned counsel for the applicant, which is taken on record.
4. The present application under Section 528 of B.N.S.S. has been filed to quash the entire proceedings of Special Session Trial No. 552 of 2025 (State vs. Nischal Gupta @ Devu), arising out of Case Crime No. 81 of 2025, under Sections 69, 89, 351(3), 352 of B.N.S. and Section 5(L)/6 of POCSO Act, Police Station Govind Nagar, District Kanpur Nagar, as well as chargesheet dated 30.03.2025 and cognizance order dated 22.04.2025, pending in the Court of Special Judge (POCSO Act), Court No. 25, Kanpur Nagar.
5. The brief facts of the case are to the effect that the opposite party no. 2/first informant, lodged an F.I.R. against the applicant and his brother on

09.03.2025 at 10:13 hours in respect of alleged incident between date 01.01.2021 and 13.02.2025. The F.I.R. was registered as Case Crime No. 81 of 2025 at Police Station Govind Nagar, District Kanpur Nagar, under Sections 69, 123, 89, 352, 115(2), 351(3), 61(2) of B.N.S. and Section 3/4 of POCSO Act, wherein allegation has been levelled by the informant/opposite party no. 2, that she came in contact with the applicant on 01.01.2021 in a family function. The informant/victim was minor at that time. She was subjected to rape on account of false promise of marriage by the applicant between December, 2021 and 06.12.2024. The informant came to know that she conceived pregnancy on 02.01.2025, however, the same was terminated with the help of applicant and his brother. On 13.02.2025, the applicant and his brother reached house of the informant and threatened her for dire consequences.

6. The Investigating Officer commenced investigation and medical examination of the victim was conducted, however, no injury was noticed in her medical examination. The statement of the victim was recorded under Section 180 of B.N.S.S. wherein she reiterated her earlier version already mentioned in the F.I.R. She claimed herself to be a minor girl at the time of alleged incident. Similar statement was given by the victim before the learned Magistrate, however, she claimed that she was aged about 20 years. The Investigating Officer submitted chargesheet in this case on 30.03.2025, after recording statements of the other witnesses. The learned Court concerned took cognizance of offence vide order dated 22.04.2025.

7. It is submitted by the learned counsel for the applicant that it is claimed by the applicant that marriage had taken place between him and the victim and therefore he moved a discharge application before the learned Trial Court on 04.09.2025 and an objection was also filed by the informant/victim on 03.11.2025, wherein she claimed herself to be a major girl at the time of alleged incident and further stated that the applicant and the victim were in love for a long time and physical relationship between them, was established with the consent of the victim. It is also submitted that the marriage between the applicant and the victim has been solemnized on 25.08.2025. The learned Trial Court did not discharge the applicant and his discharge application moved by him under

Section 250 of B.N.S.S., was rejected by the learned Trial court vide order dated 13.01.2026, hence the present application has been moved by the applicant for quashing of the entire proceedings pending before the learned Trial Court.

8. It is further submitted by the learned counsel for the applicant that in the supplementary affidavit, marriage certificate and photographs of marriage, have been appended and it is claimed that the marriage between the applicant and victim was solemnized on 25.08.2025. It is further submitted that compromise has taken place between the parties and the compromise deed dated 11.02.2026 has been appended alongwith the supplementary affidavit which is duly signed by both the contesting parties.

9. Learned counsel for the opposite party no. 2/informant has also filed counter affidavit wherein factum of marriage as well as the compromise deed dated 11.02.2026, have been accepted and it is alleged that the present application filed by the applicant under Section 528 of B.N.S.S. be allowed on the basis of compromise between the parties.

10 Learned A.G.A. opposed the prayer made by the learned counsel for the applicant, but could not dispute the aforesaid fact of marriage and compromise between the parties.

11. I have heard rival submissions of the parties and perused the record.

12. Undoubtedly, the marriage of the applicant and the victim has been solemnized on 25.08.2025 and it has not been disputed by the victim in her objection filed before the learned Trial Court on 03.11.2025 as well as in her counter affidavit. The married couple are living under the same roof for a very long time and the dispute has been settled between the parties and the first informant/victim and her family members are ready to drop the criminal proceedings against the present applicant.

13. Reference may be made to the judgements of Supreme Court in **K. Dhandapani Vs. The State By the Inspector of Police, 2022 SCC OnLine SC 1056** and **Mafat Lal and other Vs. The State of Rajasthan, 2022 SCC OnLine SC 433**, wherein, the Apex Court quashed the

criminal prosecution of accused therein on the ground that accused had solemnized marriage with the prosecutrix and court cannot turn a blind eye to the said fact. In the submission of learned counsel for applicant, the ratio laid down by Apex Court in aforementioned judgements is squarely applicable to the facts of the present case. As such, no exception can be carved out in the case of present applicant with reference to the aforementioned judgements of Supreme Court inasmuch as the applicant has also solemnized marriage with the prosecutrix and the parties are happily living together. On the above conspectus, the learned counsel for applicant submits that the criminal prosecution of applicant cannot be sustained in law as well as fact and therefore, the same is liable to be quashed by this Court.

14. The Apex Court in the case of **K. Dhandapani (supra)** and **Mafat Lal (Supra)** also quashed the proceedings against the accused therein on the grounds that the accused had solemnized marriage with the prosecutrix and secondly, the court cannot turn a blind eye to the said fact. Since the judgement rendered by Apex Court in the case of **K. Dhandapani (supra)** is a short one, therefore, the same is reproduced in its entirety:

"Leave granted.

The appellant who is the maternal uncle of the prosecutrix belongs to Valayar community, which is a most backward community in the State of Tamilnadu. He works as a woodcutter on daily wages in a private factory. FIR was registered against him for committing rape under Sections 5(j)(ii) read with Section 6, 5(I) read with Section 6 and 5(n) read with Section 6 of Protection of Child from Sexual Offences (POCSO) Act, 2012. He was convicted after trial for committing the said offences and sentenced to undergo rigorous Reason: imprisonment for a period of 10 years by the Sessions Judge, Fast Track Mahila Court, Tiruppur on 31.10.2018. The High Court, by an order dated 13.02.2019, upheld the conviction and sentence. Aggrieved thereby, the appellant has filed this appeal.

Mr. M.P.Parthiban, learned counsel appearing for the appellant, submitted that allegation against him was that he had physical relations

with the prosecutrix on the promise of marrying her. He stated that, in fact, he married the prosecutrix and they have two children.

The appellant submitted that this Court should exercise its power under Article 142 of the Constitution and ought to do complete justice and it could not be in the interest of justice to disturb the family life of the appellant and the prosecutrix.

After hearing the matter for some time on 08th March, 2022, we directed the District Judge to record the statement of the prosecutrix about her present status. The statement of the prosecutrix has been placed on record in which she has categorically stated that she has two children and they are being taken care of by the appellant and she is leading a happy married life.

Dr. Joseph Aristotle S., learned counsel appearing for the State, opposed the grant of any relief to the appellant on the ground that the prosecutrix was aged 14 years on the date of the offence and gave birth to the first child when she was 15 years and second child was born when she was 17 years. He argued that the marriage between the appellant and the prosecutrix is not legal. He expressed his apprehension that the said marriage might be only for the purpose of escaping punishment and there is no guarantee that the appellant will take care of the prosecutrix and the children after this Court grants relief to him.

In the peculiar facts and circumstances of this case, we are of the considered view that the conviction and sentence of the appellant who is maternal uncle of the prosecutrix deserves to be set aside in view of the subsequent events that have been brought to the notice of this Court. This Court cannot shut its eyes to the ground reality and disturb the happy family life of the appellant and the prosecutrix. We have been informed about the custom in Tamilnadu of the marriage of a girl with the maternal uncle.

For the aforesaid mentioned reasons, the conviction and sentence of the appellant is set aside in the peculiar facts of the case and shall not be treated as a precedent. The appeal is accordingly, disposed of. Pending application(s), if any, shall stand disposed of.

In case, the appellant does not take proper care of the prosecutrix, she or the State on behalf of the prosecutrix can move this Court for modification of this Order."

15. The Apex Court in the case of **Shriram Urav Vs. State of Chhattisgarh in Criminal Appeal No(S). 41/2021**, decided on 10.01.2025, also quashed the conviction as well as the sentence imposed upon the appellant on the ground that the appellant/accused and the complainant/victim had married each other.

16. Similarly, in the case of **Dasari Srikant vs. State of Telangana reported in (2024) SCC OnLine SC 936**, wherein, under identical circumstances and almost identical provisions the Supreme Court quashed the proceedings instituted against the accused therein. The relevant paragraph 8 to 10 of the Dasari Srikant (supra) read as under:-

"8. Since, the appellant and the complainant have married each other, the affirmation of the judgment rendered by the High Court would have the disastrous consequence on the accused appellant being sent to jail which in turn could put his matrimonial relationship with the complainant in danger.

9. As a consequence, we are inclined to exercise the powers under Article 142 of the Constitution of India for quashing the conviction of the accused appellant as recorded by the learned trial Court and modified by the High Court.

10. As a result, the impugned judgment dated 27th June, 2023 passed by the High Court and judgment dated 9th April, 2021 passed by the trial Court are hereby quashed and set aside."

17. In another judgment of **Mahesh Mukund Patel vs. State of U.P. and Others**, reported in **2025 SCC OnLine SC 614**, the Hon'ble Supreme Court quashed the proceedings of offence, punishable under Section 354A, 363, 366, 376 of the Indian Penal Code, 1860 and Section 3 and 4 of the Protection of Children from Sexual Offences Act on the ground of marriage between the accused and the victim. It was brought on record that from the wedlock between the accused and the victim, two children

were born, whose documents were produced alongwith the appeal. The Apex Court in this case quashed the proceedings on the ground that no purpose would be served by continuing the prosecution as it would cause undue harassment to the appellant/accused and the victim and their children.

18. The Supreme Court in another judgment of **Madhukar and Others vs. The State of Maharashtra and Another**, arising out of SLP (Criminal) No. 7212 of 2025, alongwith **Prabhakar vs. The State of Maharashtra and Another**, arising out of SLP (Criminal) No. 7495 of 2025, quashed the proceedings of case crime no.302 of 2023, dated 20.11.2023, under sections 324, 141, 143, 147, 149, 452, 323, 504 and 506 of the Indian Penal Code, 1860 as well as quashed the proceedings of case crime no.304 of 2023, dated 21.11.2023, under sections 376, 354-A, 354-D, 509 and 506 IPC on the basis of compromise between the parties. Paragraph nos.6, 7 and 8 of the said judgment are reproduced herein:-

"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.

8. Therefore, having considered the peculiar facts and circumstances of this case, and taking into account the categorical stand taken by the complainant and the nature of the settlement, we are of the opinion that the continuation of the criminal proceedings would serve no useful purpose and would only amount to abuse of process."

19. In view of the ratio laid down by the Hon'ble Apex Court in the aforementioned judgments as well as facts of the case, the present application succeeds and is liable to be allowed. It is accordingly **allowed**.

20. The entire proceedings of Special Session Trial No. 552 of 2025 (State vs. Nischal Gupta @ Devu), arising out of Case Crime No. 81 of 2025, under Sections 69, 89, 351(3), 352 of B.N.S. and Section 5(L)/6 of POCSO Act, Police Station Govind Nagar, District Kanpur Nagar, as well as chargesheet dated 30.03.2025, cognizance order dated 22.04.2025 and order dated 13.01.2026 passed in the aforesaid case, pending in the Court of Special Judge (POCSO Act), Court No. 25, Kanpur Nagar, against the applicant, are hereby **quashed**.

21. No order as to costs.

(Vivek Kumar Singh,J.)

March 23, 2026

A.P. Pandey