



2026:AHC:129671

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 3373 of 2026

Khinni And Another

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Kamlesh Kumar Dandwivedi, Saurabh Dwivedi

Counsel for Opposite Party(s) : G.A.

Court No. - 73

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri K.K. Dwivedi, learned counsel for the applicants who are 3 in number and Sri Chandan Singh learned AGA for the States.

2. This Court on 06.04.2026 issued notices to the opposite party no. 2 and there is a report dated 12.06.2026 that the notice has been served upon the opposite party no. 2 personally as per the report of CJM, Agra.

3. Till the dictation of the order, nobody is present on behalf of the opposite party no. 2 nor any Vakalatnama has been filed.

4. Learned AGA submits that he is well equipped with the instructions and he is in a position to argue the matter and he does not propose to file any affidavit. With the consent of the parties, the application is being decided at the fresh stage.

5. The case of the applicants who are 3 in number is that a first information reports stood lodged by the opposite party no. 2 against the unknown accused who were 4 in number with an allegation that the first informant's daughter in the evening of 18.12.2018 was returning from the coaching and near Bhagwan Talkies crossing four unnamed accused took away the daughter of the opposite party no. 2 and committed bad act. Consequently, first information report stood lodged under Section 376D being FIR No. 1366 of 2018 on 18.12.2018 at 22:52 hours before Police Station New Agra, District Agra against the applicant. Investigation stood triggered and thereafter, on 14.06.2024 in SST No. 293 of 2019, the court of Additional District and Session Judge proceeded to reject the application so preferred by the applicants under Section 311 Cr.P.C. for recalling of the witness on the ground that dilatory tactics had been adopted by the applicants.

6. Questioning the order dated 14.06.2024 passed by Additional District and Session Judge, Court No. 11, Agra in SST No. 293 of 2019 arising out of Case Crime No. 1366 of 2018 under Section 376D, 394, 365, 506, 411, 34, Police Station New Agra, District Agra, the present application has been preferred.

7. This Court on 06.04.2026 proceeded to pass the following orders.-

"1. The supplementary affidavit, filed today, is taken on record.

2. Issue notice to the opposite party no.2, returnable at an early date.

3. Put up as fresh on 18.05.2026 along with a report regarding service of notice.

4. In the meantime, learned Counsel for the opposite party no.2 may file a counter affidavit within two weeks.

5. Rejoinder affidavit, if any, may be filed within one week thereafter."

8. There is an office report dated 12.06.2026 which reads as under.-

"Notice has been served upon opposite party no. 2 personally as per report of Ld. C.J.M., Agra is kept on record."

9. Learned counsel for the applicants has sought to argue that the order impugned cannot be sustained for the simple reason that there was certain circumstances beyond the control and the comprehension of the applicants for recalling of the witnesses particularly when the counsel who was representing the applicants was negligent and he never used to attend the hearing and thus, the applicants were harboring under the impression that their interest was being safeguarded but despite opportunity is being accorded for cross examination of PW 1 and PW 2, the said opportunity was not availed. Learned counsel for the applicants submits that though speedy trial is one of the factors but fair play also holds paramount importance as nobody should be unheard while being condemned. Contention is that with the change of the lawyer, now the applicants seek only one opportunity to cross examine and the applicants shall not take any adjournment in that regard. Contention is that the court below ought to have taken a pragmatic view in view of the allegations so leveled particularly under Section 376D as cross examination is important and vital in that regard.

10. Learned AGA, on the other hand, submits that whatever might be the applicants had taken liberty which was totally uncalled for as once the applicants are accused then not only they should rely upon their counsel but

they should have been present and take all possible steps for getting the cross examination done.

11. I have heard the submissions so made across the bar and perused the record.

12. Plainly and simply, a first information reports stood lodged against the applicants under Section 376D, thereafter, charge sheet was submitted and the trial commenced. On 18.05.2023, the opportunity to cross examine the PW 1 and PW 2 was turned down, an application was preferred on 20.04.2024 for recalling of the witnesses for getting cross examination done and the said application has been rejected by the court below on 14.06.2024 on the premise that dilatory tactics had been adopted. In the opinion of the Court, though speedy and fair trial are the wheels to the chariot but what is most important is that each and every case is to be decided on its own strength. Here, the applicants are facing trial of heinous crime and they seek only one opportunity to get cross examination done of PW 1 and PW 2 while coming up with the stand that the lawyer who earlier used to represent was negligent. Be that as it may, the endeavor of the Court is to get the trial concluded within the stipulated period as per the statute and that too while adopting fair play.

13. Considering the peculiar facts and the circumstances of the case and the stand taken by the counsel for the applicants as per the instructions received from their client that they shall not take any adjournment. The one more opportunity is being accorded. The application is being decided in the following terms.-

(a) the order dated 14.06.2024 passed by the District & Session Judge, Court No. 11, Agra and SST No. 293 of 2019 arising out of Case Crime No. 1366 of 2018 under Section 376D, 394, 365, 506, 411, 34 IPC Police Station New Agra, District Agra is set aside;

(b) the applicants shall file a certified copy of the order passed today along with the self-attested copy of the application before the court below by **10.07.2026**;

(c) the court below shall thereafter fix a date for cross examination of PW 1 and PW 2 while fixing a specific date in **July, 2026**.

(d) the applicant shall join the proceedings and participate and get cross examination done of PW 1 and PW 2;

(e) no adjournment shall be accorded to the applicants at any cost or his counsel and, in case, the counsel has some difficulty then alternate

arrangement is to be made.

14. The passing of the order today would not be in any manner whatsoever construed to be any observation on the merits of the matter. The court below shall finally conclude the proceeding according with law.

15. The benefit of the order passed today shall remain applicable only once the applicant sticks to the timeline and does not violate any of the terms and conditions of the order. In case, adjournment is taken by the counsel or the applicant then the protection shall stand extinguished without reference to the Bench and the Court shall proceed with the matter.

16. With the said observations, the application stands **disposed of**.

June 30, 2026
Rajesh

(Vikas Budhwar,J.)