

(2026) 02 JH CK 1780

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 3211 Of 2025

Abhishek Kumar

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 02-02-2026

Acts Referred:

Constitution of India, 1950 — Article 142
Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 528
Code of Criminal Procedure, 1973 — Section 482
Bhartiya Nyaya Sanhita, 2023 — Section 69

Citation : (2026) 02 JH CK 1780

Hon'ble Judges : Anil Kumar Choudhary, J

Bench : Single Bench

Advocate : Rahul Kumar, Shweta Singh, Akhilesh Kr. Singh

Final Decision : Disposed Of

Judgement

Anil Kumar Choudhary, J

1. Heard the parties.

2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 528 of the BNSS, 2023 with the prayer for quashing and setting aside the entire criminal proceeding including the order dated 31.07.2025 passed by learned JMFC, Dhanbad , in connection with Mahila P.S. case no. 09 of 2025 whereby and where under, learned Magistrate has taken cognizance of the offence punishable under Section 69 and 352 of the BNS, basing upon the charge sheet submitted by the police against the petitioner for having committed the said offences.

3. The allegation against the petitioner is that the petitioner by adopting deceitful means and by making promise to marry the Opp. Party no. 2 without any intention to fulfil the same, had sexual intercourse with the Opp. Party no. 2 and has thus committed the offence punishable under Section 69 of the BNS. There is

also allegation against the petitioner that the petitioner has intentionally insulted the Opp. Party no. 2 and gave provocation to her intending and knowing it likely that such provocation will cause her to break public peace or to commit any other offence. Police after investigation of the case found the allegations against the petitioner to be true, based on the materials collected during the investigation and submitted charge sheet.

4. Relying upon the order of the Hon'ble Supreme Court of India in the case of Narinder Singh and Others vs. State of Punjab & Another reported in (2014) 6 SCC 466, in paragraph 29.3 of which reads as under :-

"29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender." (Emphasis supplied)

It is submitted by learned counsel for the petitioner that though in that case, it has been mentioned that the power to quash the criminal proceeding in exercise of power under Section 482 of CrPC, is not to be exercised in prosecution which involves heinous and serious offences of mental depravity or offences of murder, rape, dacoity etc. and in respect of the offences, which are not in private nature and have serious impact on society, but since Section 69 of the BNS itself, says that the offence punishable under Section 69 of the BNS will happen, only when the sexual intercourse of the accused with the victim, does not amount to the offence of rape, so in respect of the offence punishable under Section 69 of the BNS, despite the bar imposed in para 29.3 of the aforesaid case, the offence punishable under Section 69 of BNS can be compounded.

5. In this respect, learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court of India in the case of Kapil Gupta vs. State (NCT of Delhi) and Another reported in (2022) 15 SCC 44 and submits that therein, in the peculiar facts and circumstances of that case, the Hon'ble Supreme Court of India while reiterating the view of the Hon'ble Supreme Court of India that though in a heinous or serious crime like rape, the Court should not normally exercise the powers of quashing the proceedings, in the peculiar facts and circumstances of that case and in order to give succour to Respondent No. 2 of that case, so that she is saved from further agony of facing two criminal trials, one as a victim and one as an accused, the Hon'ble Supreme Court of India found it fit that in that case the extraordinary power of the Hon'ble Supreme Court of India can be exercised to quash the criminal proceedings.

6. This Court is of the considered view that in para 16 of that judgment, the words "extraordinary powers of this Court be exercised" is the power vested with

the Hon'ble Supreme Court of India vide Article 142 of the Constitution of India.

7. It is next submitted by learned counsel for the petitioner that the same do not refer to the power vested upon the Hon'ble Supreme Court of India under Article 142 of the Hon'ble Supreme Court of India but according to learned counsel for the petitioner, the same means the power under Section 528 of the BNSS; and insist that this particular submission of him be mentioned in this judgement.

8. It is next submitted that the allegation against the petitioner is false and the parties have amicably settled the dispute outside the court and the charge has not yet been framed, hence, it is submitted that the prayer as made in this Criminal Miscellaneous Petition be allowed.

9. Learned Addl. PP and learned counsel for the Opp. Party no. 2, on the other hand, vehemently oppose the prayer of the petitioner. Learned Addl. PP submits that the submission of the learned counsel for the petitioner that the extraordinary power of the Hon'ble Supreme Court of India, is the one which has been provided for in Section 528 of the BNSS, is a fallacious submission and without any merit; because the power under Section 528 of the BNSS, by no stretch of imagination, can be termed as extraordinary power of the Hon'ble Supreme Court of India and it is the power under Article 142 of the Constitution of India, under which, the extra ordinary power has been vested with the Hon'ble Supreme Court of India, it is referred to in paragraph- 16 of the said judgement. It is further submitted by learned Addl. PP that in view of para 29.3 of the judgment in the case of Narinder Singh and Others vs. State of Punjab & Another (supra), the case of rape, murder has been mentioned by way of illustration but as has been reiterated by the Hon'ble Supreme Court of India in the case of Kapil Gupta vs. State (NCT of Delhi) and Another (supra) and as was also appearing in the original verbatim in the judgment in the case of Narinder Singh and Others vs. State of Punjab & Another (supra), in any case, which involves the heinous or serious crime, the power under Section 482 of the CrPC, should not normally be exercised. It is next submitted that unlike the case of Kapil Gupta vs. State (NCT of Delhi) and Another (supra), here the informant is not facing the trial as an accused, so by no stretch of imagination, it can be said that this case is a case of peculiar nature as was in the case of Kapil Gupta vs. State (NCT of Delhi) and Another (supra). It is next submitted by learned Addl. PP that the offence under Section 69 of the BNS provides for a punishment which may extend to 10 years besides the fine. Hence, by no stretch of imagination, it can be said that it is not a serious offence of mental depravity nor it can be said that it is not a heinous offence. Moreover, undoubtedly, the offence punishable under Section 69 of the BNS, certainly has a serious impact on society and that's why the legislature has provided for punishment, which may extend to 10 years, hence, in view of the bar imposed by para 29.3 of the judgment in the case of Narinder Singh and Others vs. State of Punjab & Another (supra), read with para 16 of the judgment of the Hon'ble Supreme Court of India in the case of Kapil Gupta vs. State (NCT of Delhi) and Another (supra) and Keeping in view the direct allegation of serious

nature, which is sufficient to constitute the offence punishable under Section 69 of the BNS, which is not even disputed by the petitioner anywhere in this Criminal Miscellaneous Petition, this is a not fit case where the entire criminal proceeding including the order dated 31.07.2025 passed by learned JMFC, Dhanbad , be quashed and set aside.

10. Learned counsel for the Opp. Party no. 2 on the other hand, submits that in view of the compromise between the parties, the prayer as prayed for by the petitioner, be allowed.

11. Having heard the submissions made at the Bar and after going through materials available in the record, it is without doubt that as the verbatim of Section 69 of the BNS which reads as under :-

69. Sexual intercourse by employing deceitful means, etc.-

Whoever, by deceitful means or by making promise to marry to a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Explanation.-"deceitful means" shall include inducement for, or false promise of employment or promotion, or marrying by suppressing identity. (Emphasis supplied)

goes to show that the offence punishable under Section 69 of BNS will take place when the sexual intercourse by the accused with the victim, does not amount to the offence of rape but that does not exclude the offence punishable under Section 69 of BNS, 2023 from a serious offence of mental depravity or heinous offence.

12. Now coming to the facts of the case; perusal of the record reveals that there is direct and specific allegation against the petitioner of making promise to marry the informant without any intention to fulfil the same, the petitioner had sexual intercourse with the victim, so, the ingredients of the offence punishable under Section 69 of the BNS, 2023 is made out from the allegations made in the FIR itself and which offence was found to be true by the police during investigation of the case and after completion of the investigation, the police has submitted charge sheet against the petitioner, for having committed inter alia the offence punishable under Section 69 of BNS, 2023 and learned Magistrate has taken the cognizance of the said offence.

13. So far as the contention of learned counsel for the petitioner that the words "extraordinary powers" of the Hon'ble Supreme Court of India is a power under Section 528 of the BNSS is concerned, this court is of the considered view that the same has no legs to stand and this court is not in agreement with the submission made by learned counsel for the petitioner, hence, the said contention of the learned counsel for the petitioner is rejected.

14. What the Hon'ble Supreme Court of India in the case of Kapil Gupta vs. State

(NCT of Delhi) and Another (supra) in para 16 has held is that the extra ordinary power of the Hon'ble Supreme Court of India obviously under Article 142 of the Constitution of India, can be exercised, obviously by the Hon'ble Supreme Court of India only, in peculiar cases like the one before the Hon'ble Supreme Court of India in the case of Kapil Gupta vs. State (NCT of Delhi) and Another (supra), despite the prohibition for exercising the power of quashing the proceedings in a heinous or serious crime like the rape. Since this court has no power under Article 142 of Constitution of India, this Court is of the considered view that the said ratio of the judgment in the case of Kapil Gupta vs. State (NCT of Delhi) and Another (supra) is not applicable, so far as this court is concerned.

15. Now coming to the facts of the case, this Court finds that there is direct and specific allegation against the petitioner of making promise to marry the informant without any intention of fulfilling the same and by adopting deceitful means, for having sexual intercourse with the informant.

16. In view of the direct allegation of serious nature, which in the considered opinion of this Court, is a serious offence of mental depravity as well as a heinous offence and an offence which has serious impact on the society, this Court is of the considered view that this is not a fit case where the entire criminal proceeding including the order dated 31.07.2025 passed by learned JMFC, Dhanbad , be quashed and set aside on the ground of compromise between the parties.

17. So far as the merits of the case is concerned, in view of the undisputed fact of the case, if the allegation made in the FIR and the material collected during the investigation of the case as well as the chargesheet are considered to be true in their entirety, the offence punishable under Section 69 of the BNS is made out. Hence, this Court is of the considered view that there is no justifiable reason to accede to the prayer made by the petitioner as prayed for in this Criminal Miscellaneous Petition in exercise of the power under Section 528 of BNSS.

18. Accordingly, this Criminal Miscellaneous Petition being without any merit is dismissed and in view of the disposal of this Criminal Miscellaneous Petition, the interlocutory application, if any, is also disposed being infructuous.