



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 4285/2024

Krishan Joshi

M-11 B-11/11-11

-----Petitioner

Versus



1. State Of Rajasthan, Through Director General Of Police,
Headquarter, Rajasthan, Jaipur.

2. Inspector General Of Police, Bikaner Range, Bikaner.

3. Superintendent Of Police, Bikaner

4. Station House Officer, Police Station Nokha, District
Bikaner.

-----Respondents

For Petitioner(s) : Ms. Swati Shekhar.

For Respondent(s) : Mr. Mukhtyar Khan, P.P.

HON'BLE MR. JUSTICE ARUN MONGA

Order

09/07/2024

1. Head Note of the petition herein reads as under:

"S.B. CRIMINAL MISC. PETITION UNDER SECTION 528 BNSS FOR FAIR, IMPARTIAL AND EFFECTIVE INVESTIGATION IN FIR NO.0068/2024 DATED 02.02.2024 POLICE STATION NOKHA DISTRICT BIKANER FOR THE OFFENCE UNDER SECTION 420, 120-B IPC."

2. A perusal of the above clearly reveals that the FIR was registered on 02.02.2024 i.e. prior to coming into force of The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) with effect from 01.07.2024.

3. In the premise, in view of the savings clause contained under section 531(2)(a) of the BNSS, the petition ought to have been filed under the old corresponding Section 482 of Criminal Procedure Code, 1973, (Cr.P.C.), and not under section 528 of the new Code (BNSS).

4. For ready reference, the entire Section 531 of BNSS is reproduced hereinbelow:



531. *Repeal and savings-*

(1). *The Code of Criminal Procedure, 1973 (2 of 1974) is hereby repealed.*

(2). *Notwithstanding such repeal—*

(a). *if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973, (2 of 1974), as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force;*

(b). *all notifications published, proclamations issued, powers conferred, forms provided by rules local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the said Code and which are in force immediately before the commencement of this Sanhita, shall be deemed, respectively, to have been published, issued, conferred, specified, defined, passed or made under the corresponding provisions of this Sanhita;*

(c). *any sanction accorded or consent given under the said Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have been accorded or given under the corresponding provisions of this Sanhita and proceedings may be commenced under this Sanhita in pursuance of such sanction of consent;*

(3). *Where the period specified for an application or other proceeding under the said Code had expired on or before the commencement of this Sanhita, nothing in this Sanhita shall be construed as enabling any such application to be made or proceeding to be commenced under this Sanhita by reason only of the fact that a longer period therefor is specified by this Sanhita or provisions are made in this Sanhita for the extension of time.”*

(Emphasis supplied)



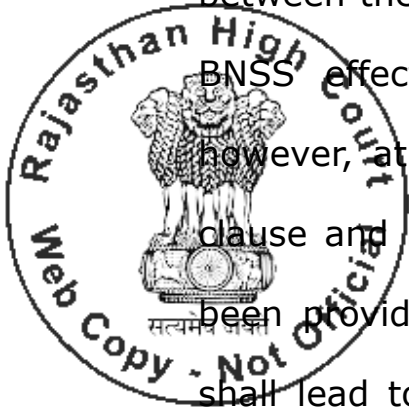
5. We are concerned here only with the savings clause contained in sub section 531(2)(a), *ibid*. A perusal thereof clearly reflect that, not only the pending trial / appeal, but even an inquiry and/or investigation, which is underway prior to coming into force of the BNSS, shall have to be dealt with in accordance with the provisions of Cr.P.C., 1973 and not under the BNSS, 2023.

6. The reasons for the same are not far too seek. What has to be seen simply is the date of registration of the FIR and the law as applicable as on the date of such registration. Trite it may sound, but settled position is that, the moment an FIR is registered under section 154 of the Cr.P.C., criminal investigative/administrative machinery is set in motion under Chapter XII thereof. Thus, if an FIR is registered prior to 01.07.2023 under the Cr.P.C., it would amount to a pending enquiry/investigation within the meaning of section 531(2)(a) of BNSS. The entire subsequent investigation procedure and even the trial procedure qua such an FIR shall then be governed by Cr.P.C. and not BNSS.

6.1. Let us analyze it deeper by dwelling further on it. Legislative processes often involve simultaneous twin actions i.e.

not only the creation of new law, but also the repeal of existing one at the same time. Section 531 of the new legislative code, for short referred to as "BNSS," envisages the repeal of the Code of Criminal Procedure, 1973, and it also incorporates crucial savings provision which is so essential to cater to the transitional period between the old code and the new code. No doubt, section 531 of BNSS effectively removes old code from the statute books, however, at the same time it is a repeal subject to the savings clause and not a repeal in toto. A certain transitional period has been provided, and rightly so. For, a forthwith repeal in totality shall lead to legal uncertainties, particularly, concerning ongoing legal proceedings that commenced under the old law. To mitigate such uncertainties, saving provision has been introduced. Saving clause ensures that the repeal of an old law does not adversely affect any legal proceedings or rights that were established under the old code. The saving provision facilitates a smooth transition from the old legal framework to the new one. It provides a buffer period during which the judicial and legal systems can adjust to the changes introduced by the new Sanhita.

6.2. The saving clause in Section 531(2) is critical for ensuring legal continuity and stability. It stipulates that notwithstanding the repeal, any appeal, application, trial, inquiry, or investigation pending before the new Sanhita comes into force will continue to be governed by the old Code of Criminal Procedure, 1973. This shall essentially mean that all ongoing proceedings, which have already been kicked in under the old code, will not be disrupted by the new code i.e. BNSS. This is vital for maintaining the integrity of the judicial process and ensuring

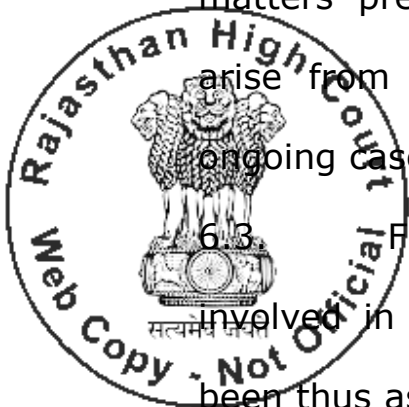


that justice is neither delayed nor denied due to procedural changes, should an affected party feel so. Rights of the accused in an FIR and/or under trials and/or convicts under appeal and the legal expectations formed under the old law have been and are required to be protected. Applicability of old code on pending matters prevents any retrospective adverse effects that might arise from the sudden application of new legal provisions to ongoing cases.

6.3. Furthermore, vide saving clause, the litigants already involved in legal proceedings initiated under the old code have been thus assured that their cases will be resolved under the legal framework they were initially engaged with. Saving clause thus ensures that the repeal of old code does not create a legal vacuum, leaving ongoing proceedings in limbo and, to avoid such a scenario the old legal process ought to continue seamlessly.

6.4. Speaking of judiciary, vide the savings clause which envisages dual approach i.e. ongoing cases to be disposed of under the old law and the ones registered after 01.07.2023 under the new code, even the courts can manage their workload more efficiently. Judges and lawyers familiar with the old code can continue their work without needing to adapt immediately to the new provisions. Section 531 of the new Sanhita, while repealing of the Code of Criminal Procedure, 1973, simultaneously thus safeguards ongoing legal proceedings through its savings clause.

7. No doubt, procedural laws can be applied retrospectively, subject of course to the judicial review, but in view of Section 531(2)(a) of the BNSS herein, it is amply clear that all the pending matters prior to coming into force of BNSS, 2023, as



specifically mentioned in Section 531(2)(a) of BNSS shall continue to be governed by the old Code i.e. Cr.P.C., 1973. Therefore, the petition in hand also has to be treated under Section 482 Cr.P.C.

8. It so transpires that learned counsel for the petitioner had though rightly filed the instant petition initially under Section 482 Cr.P.C., but on an objection raised by Registry of this Court, it was converted into one under section 528 of BNSS.

In view of the discussion in the preceding part hereinabove, the objection raised by the Registry is overruled. The present petition is resultantly treated as one under Section 482 Cr.P.C.

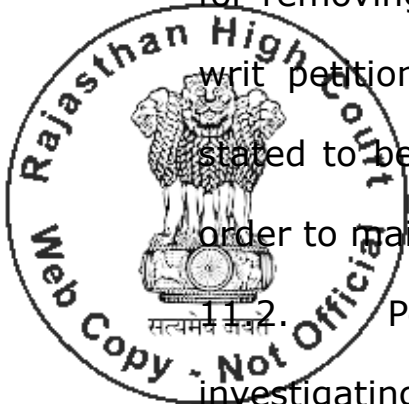


10. Adverting now to merits of the case in hand. Dissatisfied with the progress and manner of the investigation, the petitioner seeks issuance of directions to the officials respondents to conduct a fair inquiry/investigation in the FIR No. 0068/2024 dated 02.02.2024, for alleged offences under Sections 420 read with 120-B of IPC, registered at Police Station Nokha, District Bikaner.

11. The relevant facts of the case, briefly speaking, are as follows: Petitioner/complainant reported to the SHO P.S. Nokha District Bikaner that his late father had purchased agricultural land in question from one Ranchhor Ram through a registered sale deed dated 08.12.1961. However, the accused Sita Ram/non owner illegally initiated proceedings qua same land before the Municipal Board under section 300(1) of the Municipal Board Act, 1959. Said proceedings were dropped/dismissed on 19.04.2007. Thereafter, Sita Ram filed an appeal before the Addl. Divisional Commissioner, which too was dismissed on 20.09.2007. Sita Ram

still did not give up, and filed a writ petition no. 8572/2009 before this Court which was also dismissed vide an order dated 18.02.2023.

11.1 After dismissal of statutory appeal, supra, the Municipal Board vide an order dated 07.03.2017 issued notice to Sita Ram for removing the encroachment. Against the said notice, two civil writ petitions bearing CWP No. 3376/2017 and 3665/2017 are stated to be pending before High Court of Rajasthan and a Court order to maintain status has also been passed therein.



11.2 Petitioner is aggrieved that despite his FIR, the investigating officer has not conducted the investigation to its logical conclusion in favor of the petitioner and has not even so far arrested the accused. Hence the instant petition.

12. In light of the aforesaid narrative pleaded in the petition, I have heard the learned counsel for the petitioner.

13. She argues that the investigating agency is not proceeding in a fair and just manner and is intentionally stalling the investigation after registration of FIR.

14. I am unable to agree with the counsel for the petitioner. The investigation is still underway and, it so appears that owing to the ongoing civil litigation the investigating officer is treading cautiously. In my opinion, rightly so. Liberty of a citizen, who is an accused, cannot be curtailed mechanically without being certain about the criminal culpability attributed to him. Be that as it may, even otherwise, the petitioner ought to have first availed of other available legal remedies, before directly approaching this Court. Ordinarily, in case of grievance arising from unfair or improper investigation of an FIR, the aggrieved person can seek recourse

for redressal thereof by approaching a superior police officer as per Section 36 of Cr.P.C. If the grievance still remains unmitigated, one can then approach a Magistrate of competent jurisdiction under Section 156(3) of Cr.P.C., who can order a further investigation and submission of a report by the police.

Additionally, an aggrieved party can choose to file a criminal complaint before the competent court, if so advised.

15 In the premise, instant petition is disposed of with liberty to approach the appropriate forum, as aforesaid, if so advised.

16 Pending application, if any, shall also stand disposed of.



(ARUN MONGA),J

49-Sumit/-

Fit for reporting

yes/no