

upon the opposite party no.2 was against her will.

27. From the perusal of the statement of opposite party no.2 recorded u/s 161 and 164 Cr.P.C., there is specific allegation of cruelty and also the harassment against the husband for demand of dowry, as well as committing unnatural carnal sex upon his wife against her wishes. Therefore, the contention of learned counsel for the applicant that no offence u/s 498A and 377 IPC and Section 3/4 D.P. Act, is made out, is misconceived. As far as the other contention of the learned counsel for the applicant that opposite party no.2 was aware about the earlier marriage of the applicant is concerned, the same is not relevant for the present controversy and also being disputed question of fact can be decided during trial, but cannot be a ground to quash the impugned proceeding.

28. So far as the submission of learned counsel for the applicant that there is delay in lodging the FIR is also misconceived because from the perusal of FIR, as well as the statements, it is clear that there was a continuous harassment of opposite party no.2 on the part of the applicant. Therefore, the judgement of **Shivendra Pratap Singh Thakur's case (supra)** relied upon by learned counsel for the applicant is not applicable in the present case.

29. Another submission of learned counsel for the applicant is that as the opposite party no.2 has refused to conduct her medical examination, therefore, the impugned proceeding deserves to be quashed is also misconceived, as unnatural intercourse was committed by the applicant with the opposite party no.2 against her wishes, and after a few days, an FIR was lodged. There is other material in the case diary, which substantiates the allegation of the opposite party no.2. Therefore, even if medical examination of

opposite party no.2 was not conducted that cannot be a ground to quash the impugned proceeding.

30. The submission of learned counsel for the applicant that the independent witness did not support the version of opposite party no.2 as mentioned in the FIR and there is no specific demand of dowry in the statement of opposite party no.2 recorded u/s 161 Cr.P.C. and 164 Cr.P.C. is also misconceived because the Apex Court in the case of **Aluri Venkata Ramana Vs. Aluri Thirupathi Rao and Others, SLP (Criminal) No.9243 of 2024** has observed that to attract the offence u/s 498A IPC, specific demand of dowry is not necessary, and cruelty committed by the husband is itself sufficient to attract the ingredients of Section-498A IPC. Even otherwise from the perusal of the statements of Section 161 Cr.P.C. and 164 Cr.P.C., offence mentioned in chargesheet are made out. Therefore, judgement of **State of Himachal Pradesh's case (supra)** is not applicable in the present case.

31. In view of the above, this court is of the view that no ground for quashing is made out, therefore, present application is **rejected**.

32. However, the applicant is at liberty to apply for bail before the court below.

(2025) 5 ILRA 642

ORIGINAL JURISDICTION

CRIMINAL SIDE

DATED: ALLAHABAD 09.05.2025

BEFORE

THE HON'BLE SAURABH SRIVASTAVA, J.

Application U/S 528 BNSS No. 14125 of 2025

Rajkumar

...Applicant

Versus

State of U.P. & Anr.

...Opposite Parties

Counsel for the Applicant:

Jai Kishan, Vipin Kumar

Counsel for the Opposite Parties:

G.A.

Civil Law - Essential Commodities Act, 1955 – Section 11 – there is hardly any sanction of prosecution in pursuance to section 11 of Essential Commodities Act available-entire proceedings is conducted by way of ignoring the strict provisions-specifically defined under section 11 of the Act-not permissible- unjustified- Proceedings quashed.

Application allowed. (E-9)

List of Cases cited:

1. Application u/s 482 Cr.P.C. No.17455 of 2012 (Manoj Mehto Vs St. of U.P. & anr.)
2. Vasanti Dubey Vs St. of M.P., decided on 17th January, 2012 in Criminal Appeal No.166 of 2012 [Arising out of Special Leave Petition (Crl.) No.1548 of 2011]

(Delivered by Hon'ble Saurabh Srivastava, J.)

1. Heard Sri Jai Kishan Rajpoot, learned counsel for applicant and Sri Gyan Prakash, learned A.G.A. for State.

2. Initiation of the matter has been triggered by way of lodging F.I.R. at the behest of opposite party no.2 on dated 12.08.2021 against applicant, who had been fair price shop dealer specifying the irregularity in distribution of essential commodities; after completion of investigation, concerned Investigating Officer, vide specific order dated 06.10.2022 issued by District Magistrate, Kasganj, submitted final report on dated 17.12.2022 before learned court of Additional Chief Judicial Magistrate, Kasganj in Case No.9794 of 2024 (State vs.

Rajkumar), whereupon learned Additional Chief Judicial Magistrate, Kasganj took cognizance of offence under section 190(1)(b) Cr.P.C. on dated 16.11.2024, which had been challenged through Application under section 528 BNSS No.9092 of 2025 with specific ground that order dated 16.11.2024 was not sustainable in the eye of law, since it is in complete violation of section 11 of Essential Commodities Act, 1955, since no approval/sanction was taken by order of, or under the authority of District Magistrate or such other officer as may be empowered by the State Government by general or special order and as such the cognizance and summoning order passed against the applicant without order of District Magistrate is abuse of the process of law since order passed under section 11 of Essential Commodities Act was in favour of the applicant.

3. On the basis of arguments so raised by learned counsel for applicant and in the light of judgement dated 05.03.2020 passed by in **Application u/s 482 Cr.P.C. No.17455 of 2012 (Manoj Mehto vs. State of U.P. and Another)**, earlier Application under section 528 BNSS No.9092 of 2025 has been allowed by way of quashing summoning order dated 16.11.2024 passed in Misc. Case No.01 of 2023 (Sunil Kumar vs. Raj Kumar) arising out of Case Crime No.440 of 2021, under sections 3/7 of Essential Commodities Act, 1955, P.S. Kasganj, District- Kasganj vide order dated 21.03.2025, but at the same time, liberty was extended in favour of learned court concerned for taking cognizance against the applicant, if required as per law, in due compliance of section 11 of Act of 1955; the extract of determination along with conclusion while passing order dated 21.03.2025 is reproduced herein below:-

"6. Since, learned counsel for applicant argued the matter on legal issues as such the process to issue notice to respondent no. 2 is hereby dispensed with.

7. Before proceeding, a ready reference of Section 11 of E.C. Act (State Amendment of U.P. 1955), is as under:-

"11. Cognizance of offences.?No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Indian Penal Code (45 of 1860) 1[or any person aggrieved or any recognised consumer association, whether such person is a member of that association or not]. 1[Explanation.?For the purposes of this section and section 12AA, ?recognised consumer association? means a voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force.] state amendment Uttar Pradesh.? In section 11, for the words ?by a person who is a public servant as defined in section 21 of the Indian Penal Code,? substitute the words ?by order of, or under authority from the District Magistrate or such other officer as may be empowered by the State Government by general or special order in this behalf.? [Vide Uttar Pradesh Act 9 of 1974, sec. 7 (w.e.f. 24-4-1974).]"

8. Having regards to judgment rendered by co-ordinate Bench of this Court in case of Manoj Mehto (supra) and from perusal of the records, it is crystal clear that compliance of Section 11 of the Act of 1955 has not been made in the present case, since it is well established that order of the District Magistrate or authorization by him is essential for taking

cognizance, which is missing in the present case. This vitiates cognizance taking in the offence by Magistrate concerned. It is under abuse of process of law. Accordingly, this application is to be allowed.

9. The instant application is hereby allowed. Impugned summoning order dated 16.11.2024 passed in Misc. Case no. 1 of 2023 (Sunil Kumar vs. Rajkumar) (arising out of Case Crime no. 440 of 2021) under Section 3/7 of Essential Commodities Act, Police Station Kasganj, District Kasganj is hereby quashed.

10. The above mentioned order will not preclude the learned court concerned for taking cognizance against applicant, if required, as per law, in due compliance of Section 11 of the Act of 1955."

4. After passing order dated 21.03.2025 by this Court, learned Additional Chief Judicial Magistrate, Kasganj passed order dated 02.04.2025, through which liberty has been invoked as provided under para-10 of the judgement dated 21.03.2025 and directed for further investigation by way of assuming that the liberty is given to take cognizance post sanction, at the same time directed the concerned Investigating Officer to seek sanction and posted the matter for 01.07.2025.

5. The instant application under section 528 BNSS has been preferred for challenging order dated 02.04.2025 passed by learned Additional Chief Judicial Magistrate, Kasganj in Case No.9794 of 2024 (State vs. Rajkumar) under sections 3/7 of Essential Commodities Act, 1955, P.S. Kasganj, District- Kasganj.

6. Learned counsel for applicant submitted that learned Additional Chief Judicial Magistrate, Kasganj was not empowered to compel the concerned Investigating Officer to seek sanction for prosecution against the applicant, once competent authority, i.e., District Magistrate, Kasganj already showed his satisfaction over the inquiry conducted by the then Investigating Officer, through which certain evidences has been put forward, which directly indicates that no further proceeding against the applicant is required and as such final report prepared by the concerned Investigating Officer has been duly approved by District Magistrate, Kasganj on dated 06.10.2022 under section 11 of Essential Commodities Act.

7. It is next submitted by learned counsel for the applicant that learned Additional Chief Judicial Magistrate, Kasganj made patent illegality which is apparent on face of record for two times; once when the final report has been submitted with proper approval of competent authority, i.e., District Magistrate, Kasganj, there was no occasion available before learned court concerned to proceed in pursuance to section 190(1)(b) Cr.P.C. vide order dated 16.11.2024 and thereafter while passing order dated 02.04.2025, an illegal direction was passed for further investigation in pursuance to section 173(8) Cr.P.C.

8. Learned counsel for applicant further submitted that learned court concerned by way of adopting provision available under section 190(1)(b) Cr.P.C. while passing order dated 16.11.2024, which has already been quashed by this Court again invoking provision under section 173(8) Cr.P.C. while passing order dated 02.04.2025, which impugned the

present application; in this case the specific provision of section 11 of Essential Commodities Act, 1955 is becoming redundant and prosecution which strictly governs with the provision contained under Essential Commodities Act since the implication of applicant is under sections 3/7 of Essential Commodities Act, 1955 has been illegally ignored.

9. For substantiating the arguments raised by learned counsel for applicant, he relied upon the judgement rendered by Hon'ble Apex Court in case of **Vasanti Dubey vs. State of Madhya Pradesh, decided on 17th January, 2012 in Criminal Appeal No.166 of 2012 [Arising out of Special Leave Petition (Crl.) No.1548 of 2011]**, the relevant extract of judgement mentioned above under para- 16 is quoted herein below:-

"16. When the facts of the instant matter is further tested on the anvil of the aforesaid legal position, we find that the Special Judge instead of following the procedure enumerated in the Cr.P.C. appeared to insist on rejecting the closure report given by the Special Police Establishment, Lokayukta Office and in the process consistently committed error of law and jurisdiction not only once, but twice. On the first occasion when the order of the Special Judge was quashed and set aside by the High Court granting liberty to the Special Judge either to take cognizance under Section 190(c) or order for further investigation as he had committed an error of jurisdiction by directing the police to straightway submit the charge-sheet against the accused-petitioner, the Special Judge did not consider it appropriate to take cognizance but ordered for further investigation by Lokayukta Police and when the matter was reinvestigated by the

Special Police Establishment of the Lokayukta Office, the Special Judge in spite of the finding of the investigating agency holding that no further material to proceed in the matter was found, refused to accept the closure report and this time it further realized that it could not proceed in the matter as there was no sanction for prosecution, which the Special Judge obviously noticed since he was not in a position to take cognizance directly under Sections 7, 13(1)(d) of the Prevention of Corruption Act in absence of sanction which was a statutory requirement. In spite of this, he refused to accept closure report but recorded a direction to obtain sanction for prosecution of the appellant and thereafter ordered for reinvestigation of the complaint for the second time creating a peculiar and anomalous situation which is not in consonance with the provision of the Code of Criminal Procedure enumerated under the Chapter relating to conditions requisite for initiation of proceedings."

10. Per contra, learned A.G.A. although vehemently oppose the prayer as made in the instant application and rebutted the stand taken up by learned counsel for applicant by way of submitting that learned court concerned proceeded in the matter in pursuance to judgement dated 21.03.2025 passed by this Court, wherein liberty has been extended and the same has been invoked by way of directing concerned Investigating Officer for further investigate the matter in pursuance to section 173(8) Cr.P.C. and as such order impugned to the instant application does not contain any illegality and the same is in the strict consonance with the procedure available under Code of Criminal Procedure.

11. After hearing rival submissions extended by learned counsel for the parties,

arguments raised by learned counsel for applicant in respect of fresh order passed by learned court concerned vide order dated 02.04.2025, which impugned the instant application, the same was uncalled for, since there is hardly any liberty extended by this Court while passing judgement and order dated 21.03.2025 and the same cannot be treated to deviate the proceedings available under the Special Act by way of taking recourse to the proceedings available in Criminal Procedure Code, since the applicant has been implicated in pursuance to allegation wherein the penalty has been provided under the Special Act and the specific procedures are also defined therein, learned court concerned by way of ignoring the strict provisions, specifically defined under section 11 of Essential Commodities Act, is not permissible in the eye of law and seems to be unjustified.

12. The arguments raised by learned A.G.A. specifically in respect of invoking liberty granted by this Court itself is not tenable in the eye of law since post sanction or further investigation has never been directed, but the liberty was granted in favour of learned court concerned for taking fresh cognizance of offence in the strict compliance of section 11 of Essential Commodities Act, if required.

13. The order passed by learned court concerned is not in consonance with the liberty as granted vide order dated 21.03.2025, it would have been in the nature for exonerating/acquitting the applicant in absence of specific orders for prosecution in pursuance to section 11 of Essential Commodities Act, which was not available before the learned court concerned. Learned court of Additional Chief Judicial Magistrate, Kasganj taken up

the liberty available under para-10 of the judgement and order dated 21.03.2025 by way of invoking the provisions available in Criminal Procedure Code, which will not be applicable when the applicant has been implicated in pursuance to sections 3/7 of Essential Commodities Act, 1955, which is a Special Act to be followed, wherein the specific provisions are available and the matter has to be dealt in accordance with the same.

14. In the light of observation as made above along with the dictum pronounced by Hon'ble Apex Court in case of **Vasanti Dubey (supra)**, order dated 02.04.2025 passed by learned Additional Chief Judicial Magistrate, Kasganj is hereby **set-aside**; once it has been crystal clearly proves that there is hardly any sanction of prosecution in pursuance to section 11 of Essential Commodities Act available, no purpose will be served to send the matter back to learned court concerned and as such entire proceedings arising out of Case Crime No.440 of 2021 instituted as Case No.9794 of 2024 (State vs. Rajkumar) is hereby **quashed and set-aside**.

15. The instant application u/s 528 BNSS stands **allowed** accordingly.

(2025) 5 ILRA 647

**ORIGINAL JURISDICTION
CRIMINAL SIDE**

DATED: ALLAHABAD 07.05.2025

BEFORE

THE HON'BLE VINOD DIWAKAR, J.

Application U/S 482 No. 19916 of 2024
Connected With
Application U/S 482 No. 32200 of 2024

Durga Yadav

Versus

...Applicant

State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:

Abhishek Kumar Yadav

Counsel for the Opposite Parties:

G.A.

Criminal Law – Criminal Procedure Code, 1973 - Sections 154 & 482 - U.P. Prohibition of Unlawful Religious Conversion Act, 2021 - Sections 2, 3, 3(1), 4, 5, 5(1), 7, 10 & 11 - Bharatiya Nagarik Suraksha Sanhita, 2023 - Sections 170, 173, 175 & 528 - Indian Penal Code, 1860– Sections 419, 420 & 508 - Constitution of India, 1950 - Article 25 & 25(1) - U.P. Prohibition of Unlawful Conversion of Religion (Amendment) Act, 2024 – Sections 4 - Application u/s 482 of Cr.P.C. – assailing the entire Criminal Proceedings – based on confidential information, alleging that some individuals were inducing people to convert to Christianity by offering money and medical treatment - Police conducted raid - Search & Seizure operation - SHO lodged FIR – several individuals were apprehended, and materials related to religious conversion were seized - St.ments were recorded - charge sheet – The applicants taken plea that the S.H.O. is not an “aggrieved person” as defined by the Act, which limits the term to victims or their close relatives, and thus the FIR and subsequent proceedings are void ab initio - The core issue before the court is “whether the FIR registered by the Station House Officer under the U.P. Prohibition of Unlawful Religious Conversion Act, 2021 is valid, given the term “any aggrieved person” in Section 4 of the Act – court finds that, the 2024 amendment to the Act and relevant provisions of the BNSS, 2023 further clarified and expanded the scope of informants – court applying purposive interpretation and considering constitutional safeguards under Article 25, held that, (i) the term “any aggrieved person” includes the S.H.O., especially in cases of mass conversions involving coercion or fraud – and (ii) the FIR disclosed cognizable offences and did not warrant quashing under the Bhajan Lal guidelines - Accordingly, the application is dismissed - with liberty to the applicants to raise