

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M)/306/2025

AQIB AHMAD

...Appellant/Petitioner(s)

Through: Ms. Masooda Jan, Senior Advocate with
Ms. Nazima Yaqoub, Advocate

Vs.

UNION TERRITORY THROUGH POLCE
STATION CHADOORA AND ANR.

...Respondent(s)

Through: Ms. Nowbahar Khan, Assisting Counsel vice
Mr. Bikramdeep Singh, Dy. AG

CORAM:

HON'BLE MR JUSTICE SANJAY PARIHAR, JUDGE

ORDER

17.04.2026

1. The petitioner, who stands accused in FIR No. 175/2018 registered under Section 377 RPC and subsequently charged under Sections 377/506 RPC along with Sections 3/4 of the POCSV Ordinance, 2018, has approached this Court seeking quashing of the FIR and all consequential proceedings, including the supplementary chargesheet. It is contended that the chargesheet constitutes a clear abuse of the process of law. According to the petitioner, the initial charges were confined to Sections 377/511 RPC; however, after a lapse of more than five years, the prosecution moved an application for alteration of charge to include offences under the POCSV Ord. 2018. The Trial Court declined such alteration and instead ordered further investigation. Taking advantage of this direction, the prosecution, under the guise of further investigation, incorporated offences under Sections 3/4 of the POCSV of 2018 along with Sections 377/506 RPC, and recorded the victim's statement afresh. It is alleged that this led to material improvements in the prosecution case, thereby exposing the proceedings as frivolous and mala fide. The petitioner asserts that the essential ingredients of the newly added offences are not satisfied and that the continuation of the proceedings would result in grave prejudice, warranting quashing of both the FIR and the supplementary chargesheet.

2. On the other hand, the respondents submit that the case originated from a written complaint dated 23rd November 2018, wherein the complainant alleged that his minor son was subjected to sexual abuse at around 4:00 PM while visiting a shop. Acting upon this complaint, an FIR under Section 377 RPC was registered, and upon completion of the initial investigation, a chargesheet under Sections 377/511 RPC was filed, leading to the petitioner's arrest and presentation before the Trial Court. During the course of trial, by order dated 14th June 2023, the Trial Court directed further investigation. Pursuant thereto, offences under Sections 3/4 of the POCSV Ord of 2018 were also added, culminating in the filing of a supplementary chargesheet. Consequent to this development, the petitioner was re-arrested, and although his bail application was initially rejected by the Trial Court, he was subsequently granted bail by this Court vide order dated 29.12.2023.
3. The respondent contended that the offence under Sections 3/4 of the POCSV Ord. of 2018 stands established on the basis of investigation, and therefore, in view of the limited scope of inherent jurisdiction under Section 482 of the CrPC read with Section 528 of the BNSS, the proceedings cannot be quashed at this stage. It is argued that once the investigating agency has collected material disclosing commission of the offence, the veracity or sufficiency of such material is a matter for trial, and the petitioner must establish his defence before the Trial Court rather than invoking the extraordinary jurisdiction of this Court. It is further submitted that no prejudice has been caused to the petitioner, as the order directing further investigation dated 14.06.2023 was passed in his presence and has remained unchallenged. The respondent also points out that on the date of occurrence, i.e., 23.11.2018, the Jammu and Kashmir Protection of Children from Sexual Violence Ordinance, 2018 was in force, which later culminated into Act No. 36 of 2018. The omission to initially invoke the relevant provisions of the POCSV law is attributed to inadvertence or incompetence on the part of the Investigating Officer, and not to absence of material. According to the respondent, the allegations on record clearly disclose the commission of offences under Sections 3/4 POCSV Ord. 2018 and therefore, the supplementary chargesheet and the cognizance taken by the Trial Court

are legally sustainable. It is also emphasized that the petitioner has not raised any plea of limitation against such cognizance.

4. Per contra, the petitioner has assailed the subsequent incorporation of Sections 3/4 contending that the initial chargesheet filed in 2018 explicitly treated the case as one of attempt to commit an offence under Section 377 RPC. It is argued that having failed to substantiate that charge during trial, the prosecution has sought to alter the nature of accusations by introducing graver offences under the POCSV, which, according to the petitioner, are wholly inapplicable. The petitioner emphasizes that the medical evidence does not support the allegation of penetrative sexual assault and is, in fact, negative, thereby negating the foundational ingredients required to attract Sections 3/4. It is further urged that there is no material indicating that the petitioner committed any act involving manipulation or physical contact of the nature contemplated under the statute. In the absence of such essential ingredients, the continuation of proceedings on the basis of a supplementary chargesheet is contended to be legally untenable, and the cognizance taken by the Trial Court is assailed as being contrary to law and an abuse of process.
5. The petitioner also asserts that the belated introduction of POCSV offences, after a lapse of nearly five years during which the prosecution allegedly failed to prove its original case, reflects a mala fide attempt to prolong the litigation and harass the petitioner. It is argued that such conduct amounts to misuse of the criminal justice system, warranting intervention by this Court in exercise of its inherent jurisdiction. In support of these submissions, reliance has been placed on **Panchananda Jana vs. The State of West Bengal and Anr.**, 2025:CHC-AS:1589 to contend that proceedings instituted with an ulterior motive or malicious intent deserve to be quashed, and on the celebrated judgment in **State of Haryana vs. Bhajan Lal AIR 1992 SC 604**, which delineates the categories of cases where the High Court may exercise its inherent powers to prevent abuse of process or to secure the ends of justice.
6. On the other hand, the counsel for the respondent argued that the object of the Ordinance is to protect children and, in this case, the victim has been subjected to penetrative sexual assault. Mere lapse on the part of the prosecution in not applying the special offence at the time of

registration of FIR would not debar it from applying the same, particularly when the Trial Court had ordered further investigation.

7. Heard learned counsel for both the sides.
8. For the just and proper adjudication of the present case, the record of the Trial Court was summoned. Before adverting to the rival submissions advanced by the parties, it would be appropriate to briefly recapitulate the prosecution case, as emerging from both the original as well as the supplementary charge-sheets. The prosecution version reveals that the alleged incident occurred on 23rd November 2018 at about 4:00 PM, and on the very same day, the victim was medically examined. The medical expert, upon examination, recorded that no external or internal injury was found in the anal region of the victim at the relevant time. The FIR came to be registered on the basis of a complaint lodged by the father of the minor victim, wherein it was alleged that the petitioner had subjected the child to indecent sexual assault. The allegations were stated to have been disclosed by the child to his mother, who, in turn, communicated the same to the complainant.
9. During the course of investigation, the statement of the mother of the victim was recorded, wherein she stated that the child had informed her that the accused had lured him when he had gone to a shop, taken him inside, and removed his trousers. It was further stated that the child raised an alarm, upon which the accused fled from the spot. On the basis of the statements of the mother and other witnesses, the investigating agency laid a charge-sheet for offences punishable under Sections 377/511 RPC, pursuant to which the petitioner was arrested and put to trial.
10. It is pertinent to note that during the pendency of the trial, the prosecution moved an application seeking alteration of charge. Though the learned Trial Court declined the said prayer, it granted liberty to the investigating agency to conduct further investigation in the matter. The said order directing further investigation was never assailed by the petitioner(s), and thus, its legality has attained finality. Consequently, further investigation was carried out, culminating in the filing of a supplementary charge-sheet dated 21.08.2023.
11. During the course of further investigation, the victim child was re-examined, including his statement under Section 164-A CrPC, wherein

the child stated that the accused first took him to a compound and thereafter to an adjoining washroom, removed his clothes, and committed a “bad act” with him. The victim further stated that the accused threatened to kill him in case he raised an alarm, and that the act caused him severe pain, following which he raised alarm and was thereafter let off by the accused.

12. Thus, while the initial charge-sheet was founded primarily on the medical opinion and the statements recorded during the initial investigation, culminating in offences under Sections 377/511 RPC, the subsequent supplementary charge-sheet is based upon the improved and more detailed version of the victim recorded during further investigation, particularly his statements under Section 164 CrPC, before the Magistrate on 24.07.2023, wherein specific allegations of the commission of a sexual act, accompanied by threat and resultant pain, have been made against the accused. At the time when incident happened on 23.11.2018 the child was around nine years old and at the time of making of aforesaid statement he was around fifteen years old.
13. The Trial Court, upon filing of the supplementary chargesheet, has proceeded to frame charges against the petitioner for offences punishable under Sections 377/506 RPC read with Sections 3/4 of the Protection of Children from Sexual Violence Ordinance 2018. It is the contention of the respondent that once charges have been framed by the Trial Court after completion of investigation, and the same having been denied by the petitioner, the chargesheet is not amenable to quashing. However, the said contention is misconceived and legally untenable. It is a settled principle that the powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 (now repealed) read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 are wide, plenary, and unfettered, enabling this Court to pass appropriate orders to prevent abuse of the process of law or otherwise to secure the ends of justice. The mere fact that cognizance has been taken or charges have been framed does not operate as an absolute bar on the exercise of such inherent jurisdiction *2025 Live Law (SC) 875*.
14. In this context, it has been authoritatively held by the Hon’ble Supreme Court (supra) in paragraph 8 as under:

“From the preamble of the writ petition filed by the petitioner before the Bombay High Court, it is evident that the same sought to invoke the twin jurisdiction under Article 226 of the Constitution and Section 528 of the BNSS for having the FIR quashed. It is true that the police report (charge-sheet) had been filed on 14th May, 2025 upon completion of investigation of the FIR, but whether or not cognizance had been taken by the jurisdictional magistrate is not too clear from the impugned order extracted above. So long as cognizance of the offence is not taken, a writ or order to quash the FIR/charge-sheet could be issued under Article 226; however, once a judicial order of taking cognizance intervenes, the power under Article 226 though not available to be exercised, power under Section 528, BNSS remains available to be exercised to quash not only the FIR/charge-sheet but also the order taking cognizance, provided the same is placed on record along with requisite pleadings to assail the same and a strong case for such quashing is set up. Significantly, it was reasoned by us in *Neeta Singh (supra)* that a judicial order not being amenable to challenge before a High Court under Article 226 of the Constitution, and there being no prayer either under Article 227 thereof or Section 482 Cr.P.C., the Allahabad High Court was justified in holding the writ petition under Article 226 to have been rendered infructuous.”

15. In the aforesaid backdrop, the objection raised by the respondent loses all its legal significance. The determinative issue that arises for consideration before this Court is whether the supplementary chargesheet filed by the respondent, whereby offences under Sections 3/4, have been subsequently incorporated, has been instituted bona fide on the basis of legally sustainable material, or whether the same is a colourable exercise of power intended to abuse the process of law.
16. As per the allegations pertaining to the incident dated 23.11.2018, there existed no material whatsoever to prima facie attract the ingredients of Sections 3/4 of the POCSV Ordinance 2018, that was applicable at the time of occurrence. The subsequent introduction of these aggravated offences, therefore, appears to be an afterthought, lacking foundational factual basis, and is liable to be scrutinized strictly within the parameters governing exercise of inherent jurisdiction by this Court. It was contended by the learned counsel for the petitioner that the alleged offence was not part of the statute at the relevant point of time. However, upon being confronted with the legal position, it was fairly conceded that on the date of occurrence, the Jammu and Kashmir Protection of Children from Sexual Violence Ordinance, 2018 was in force, which was subsequently repealed by Act No. 36 of 2018 dated 07.12.2018.

17. In the aforesaid backdrop, it is an admitted position that at the time of the incident, the petitioner came to be charged under Sections 377/511 RPC. This was on account of the investigation conducted pursuant to the complaint lodged by the father of the victim, read with the medical examination of the child, which unequivocally revealed that no external or internal injury was found in the anal region. The statement of the mother of the victim, recorded on 24.11.2018, further disclosed that the child had informed her that the accused had lured him into the shop, removed his trousers, whereupon the child raised an alarm, compelling the accused to flee. The complainant-father also stated that he had been informed by the mother of the victim that the petitioner had removed the child's trousers with an intention to commit an unnatural act.
18. It was on the basis of the aforesaid material that the petitioner was initially charged under Sections 377/511 RPC. However, during the course of trial, the prosecution sought alteration of the charge on the ground that, apart from the offence under Section 377 RPC, an offence under the Protection of Children from Sexual Offences Act, 2012 was also made out. The Trial Court, instead of altering the charge, directed further investigation. Notably, the said order was never assailed by the petitioner.
19. The victim was approximately nine years of age at the time of the incident. However, during the subsequent investigation, the victim materially altered his version. He not only shifted the place of occurrence, from inside the shop to the compound and thereafter to a washroom, but also alleged, for the first time, that the accused had removed his own clothes and committed an illegal act amounting to penetrative sexual assault, causing pain, whereafter the victim raised alarm and was eventually let off.
20. A comparative analysis of the two versions, one recorded at the initial stage of investigation and the other during subsequent investigation, clearly demonstrates material improvements in the prosecution case, both as regards the place of occurrence and the nature of the alleged act, which was later projected as penetrative sexual assault. Significantly, this subsequent version stands in stark contradiction to the earlier medical report, which had categorically ruled out any such act of penetration.

21. In view of the aforesaid, it has been urged on behalf of the petitioner that the subsequent chargesheet is nothing but an abuse of the process of law, having been instituted with an oblique motive of personal vengeance. It is contended that the material improvements introduced at a later stage are wholly inconsistent with the contemporaneous medical evidence, and had there been any act of penetration, whether partial or otherwise, the petitioner would have been charged under Section 377 RPC simpliciter, rather than under Sections 377/511 RPC.
22. During the course of arguments, learned counsel for the petitioner submitted that the order passed by the Trial Court merely permitted further investigation, i.e., collection of additional material in support of the charges already framed or for incorporation of any other offence, if made out from the material already available. It was contended that such liberty could not be stretched to permit fabrication or artificial improvement of the prosecution case. This submission carries considerable force. Even if the subsequent statement of the victim is taken at its face value, the same, when juxtaposed with the contemporaneous medical opinion, renders the allegation of penetrative sexual assault wholly inconsistent. Admittedly, the victim was neither examined during the initial investigation nor produced before the Court at the relevant stage. The subsequent version, therefore, appears to be a clear attempt to improve the prosecution case under the guise of further investigation, which is impermissible in law and amounts to abuse of the process of Court.
23. There can be no quarrel with the settled proposition that a crime is not merely a wrong against an individual but an offence against society at large. An act which shocks the collective conscience of society invites penal consequences determined by the legislature, and the criminal justice system is set in motion to ensure that the offender is duly punished so as to deter recurrence. Equally well settled is the position that the Investigating Officer is vested with the power to conduct further investigation in accordance with law for the purpose of collecting additional evidence so as to establish the nexus between the accused and the alleged crime, provided such evidence is legally admissible. The term “investigation” encompasses all proceedings undertaken for the collection of evidence by a police officer or any person authorised by a

Magistrate. The statutory mandate is thus confined to collection of evidence and not creation of evidence. The process cannot be misused as a tool for filling lacunae or for making improvements in the prosecution case.

24. In the factual backdrop of the present case, it is manifest that there was no material before the Investigating Agency at the initial stage to justify incorporation of an offence under Section 377 RPC in the absence of any evidence of penetration. The subsequent volte-face, whereby the case was sought to be converted from an attempt to commit penetrative sexual assault to an actual act of penetrative sexual assault, clearly reflects an attempt to improve the prosecution story, which is legally untenable.
25. The initial chargesheet under Sections 377/511 RPC was filed in the year 2019, pursuant to which the petitioner was put to trial. It is noteworthy that from 23.02.2019 till 03.06.2023, not a single prosecution witness came to be examined. On the said date, the prosecution, for the first time, asserted that the material collected during investigation disclosed commission of offences under Sections 7/8 of the Jammu and Kashmir Protection of Sexual Violence Ordinance, 2018, which had come into force on 16.05.2018. An application seeking alteration of charge was accordingly moved and was disposed of by the Trial Court on 14.06.2023 by directing further investigation. Significantly, even at that stage, there was no material warranting invocation of Sections 3/4 of the POCSO Act. It is only during such further investigation that the prosecution sought to completely alter the nature of the case by upgrading it from a case of sexual assault to one of penetrative sexual assault. Such a drastic shift, in the absence of foundational material at the inception, is ex facie indicative of a marked and impermissible improvement aimed solely at implicating the petitioner in a graver offence.
26. Learned counsel for the respondent argued that the petitioner would have full opportunity to contest the charges under Sections 3/4, during trial and that the very fact that charges have been framed indicates existence of prima facie material. While the aforesaid submission is legally sound in abstract, the respondent was unable to justify, in the peculiar facts of the present case, as to how the power of further

investigation could be legitimately invoked to effect a complete transformation in the prosecution case. The record, as it stands, does not support such a course of action, thereby rendering the impugned exercise legally unsustainable.

27. The inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, now embodied in Section 528 of the Bharatiya Nagarik Suraksha Sanhita, is of wide amplitude and is intended to prevent abuse of the process of law and to secure the ends of justice. It is a settled proposition that the mere fact that charges have been framed does not operate as a bar to the exercise of such jurisdiction, particularly where continuation of the proceedings would result in miscarriage of justice. The Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal supra* has illustratively laid down the categories of cases where the High Court may exercise its inherent powers to quash proceedings, including situations where the allegations do not disclose the commission of any offence, or where the proceedings are manifestly attended with mala fide and instituted with an ulterior motive.
28. In the present case, the core issue that arises for consideration is whether the power of further investigation could have been legitimately invoked to fundamentally alter the nature and substratum of the prosecution case. The law in this regard is no longer res integra. In **Vinay Tyagi v. Irshad Ali AIR 2013 SCW 220** the Hon'ble Supreme Court has held that further investigation is permissible to discover the truth and collect additional evidence, but it cannot be resorted to for the purpose of filling up lacunae in the prosecution case or to bring about a complete transformation of the original case. Similarly, in **K. Chandrasekhar v. State of Kerala 1998 5 SCC 223**, it has been authoritatively held that investigation is meant for collection of evidence and not for creation of a new case altogether.
29. Applying the aforesaid principles to the facts of the present case, it becomes evident that the prosecution, under the guise of further investigation, has not merely supplemented the existing material, but has introduced an entirely new version of the incident. The place of

occurrence has been shifted from inside a shop to a compound and thereafter to a washroom, and more significantly, the nature of the offence has been upgraded from an attempt to commit an offence under Section 377 RPC to a completed act of penetrative sexual assault under the POCSV Ord 2018. Such a drastic transformation strikes at the very root of the prosecution case and is clearly beyond the permissible limits of further investigation.

30. It is also significant to note that the subsequent version of the victim is not a mere elaboration but constitutes a material improvement affecting the very genesis of the prosecution case. The transition from an allegation of attempt to a completed act of penetrative assault, coupled with change in the place of occurrence, clearly indicates that the prosecution has sought to improve its case at a belated stage. In **State of Rajasthan vs. Kalki 1981 SCR 3** Page 504, it was held that while minor discrepancies may be ignored, material improvements which go to the root of the prosecution case render the testimony unreliable. In the present case, the improvements are of such a nature that they fundamentally alter the character of the allegations and, therefore, cannot be brushed aside as minor inconsistencies.
31. The sequence of events further lends credence to the contention of the petitioner that the proceedings are mala fide. Initially, the case was registered and investigated as one under Sections 377/511 RPC. For several years, no substantial progress was made in the trial. Thereafter, an attempt to alter the charge was made, which was declined by the Trial Court, though liberty for further investigation was granted. Taking advantage of this liberty, the prosecution has, after a lapse of nearly five years, introduced offences under the POCSV 2018, by recording an improved statement of the victim. Such conduct, viewed in its entirety, suggests a deliberate attempt to upgrade the case and bring it within the fold of a graver offence. In the aforesaid factual and legal backdrop, this Court is of the considered view that there was no foundational material at the initial stage to attract the ingredients of Sections 3/4. The subsequent introduction of these offences, based solely on an improved version of the victim which stands in direct contradiction to

the contemporaneous medical evidence, cannot be sustained in law. The exercise of further investigation, in the present case, has clearly transgressed its permissible limits and has been used as a tool to alter the very nature of the prosecution case, which is impermissible.

32. Consequently, the continuation of proceedings on the basis of the supplementary chargesheet, insofar as it incorporates offence under Sections 3/4 of POCSV Ord. 2018, would amount to an abuse of the process of law. The case, thus, squarely falls within the parameters laid down in **State of Haryana v. Bhajan Lal** *supra* warranting interference by this Court in exercise of its inherent powers. Accordingly, the supplementary chargesheet to the extent indicated, along with all consequential proceedings arising therefrom, is hereby quashed, leaving it open to the Trial Court to proceed with the original charge of offence u/s 377/511 RPC besides offence u/s 506 RPC, 7/8 POCSV Of 2018 and to conclude trial expeditiously. Copy of the order be notified to trial court.

(SANJAY PARIHAR)
JUDGE

SRINAGAR

17.04.2026

Shabroz

Whether the order is speaking: Yes/No

Whether the order is reportable: Yes/No