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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRR No. 653 of 2026

- Smt. Khushbu Kumari, D/o Shri Rajendra Rajan Bharti, aged about 36 Years, R/o Hightech Colony, Type IV/172, Bacheli, Police Station- Bacheli, District- Dantewada (C.G.) **...Applicant**

versus

1. The State of Chhattisgarh, through the Station House Officer, Police Station- Bacheli, District- Dantewada (C.G.)
2. Manoj Shah, S/o Late Madhusudan Shah, aged about 40 Years, R/o Ward No. 08, Old Market Bacheli, Police Station- Bacheli, District- Dantewada (C.G.) **...Non-applicants**

For Applicant	:	Ms. Ankita Goswami, Advocate.
For Non-applicant No.1/State	:	Mr. Vinod Kumar Tekam, Government Advocate.
For Non-applicant No.2	:	None.

(Hon'ble Shri Justice Naresh Kumar Chandravanshi)

Order on Board

17/11/2026

1. This Criminal Revision has been preferred under Section 438 read with Section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short, 'BNSS, 2023'), challenging the legality and propriety of the order dated 08.04.2026 passed by the First Upper Sessions Judge, Additional Charge (FTC) / Children Court, South Bastar, Dantewada (C.G.) (hereinafter referred to as 'Children Court'), whereby the application filed by the applicant/accused seeking her discharge, i.e., quashment of Criminal Case No.02/2025 (*State of Chhattisgarh vs. Smt. Khushbu Kumari*), has been rejected.

2. Facts of the case, in brief, as revealed from the case diary and documents filed by the applicant/accused, are that the applicant/accused is a distant relative (Aunt/*Mami*) of the minor victim, aged about 14 years. She had brought the minor victim from Bihar to take care of her child. It is alleged that, in the intervening night of 5-6.07.2025, the applicant/accused assaulted the minor victim. Therefore, she became frightened and left the house at night and was sitting on the stairs of the colony, where she was seen by the Ward Councillor/complainant- Manoj Shah and other persons, to whom the minor victim narrated the incident. Based on this, Non-applicant No.2/Ward Councillor- Manoj Shah made a written complaint at Police Station Bacheli, District Dantewada (C.G.), on the basis of which, FIR bearing Crime No.30/2025 was registered on 06.07.2025 against the applicant/accused for the offences under Section 115(2) of the BNS and Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (in short, 'the Act, 2015'). The offence under Section 75 of the Act, 2015 was earlier cognizable; subsequently, it was amended to be non-cognizable and at the time of lodging the FIR, the said offence had already been amended to be non-cognizable. When this fact came to the knowledge of the police, the police filed an application before the Children Court, South Bastar, C.G. along with the case diary and *Istgasa*. Thereafter, the Children Court granted permission for investigation and arrest of the applicant/accused vide order dated 08.12.2025. After that, the police investigated the case and filed the charge-sheet against the applicant/accused on 26.12.2025, which is pending consideration as Criminal Case No.02/2025 before the Children Court, South Bastar, C.G.

3. The applicant/accused filed an application on 16.01.2026 seeking her discharge, i.e., substantially for quashment of the aforesaid criminal case, on the ground that, on the date of lodging of the FIR, both the offences were non-cognizable and the police has investigated the case violating the provisions of Section 174 of BNSS; therefore, the aforesaid criminal case be quashed and the applicant/accused be discharged. However, the learned Children Court, vide order dated 08.04.2026, rejected the said application. Hence, the applicant/accused has preferred the present revision petition.

4. Learned counsel for the applicant would submit that the aforesaid crime was registered against the applicant/accused for the offences under Section 115(2) of the BNS and Section 75 of the Act, 2015, and both the offences were non-cognizable on the date of lodging of the FIR. Despite that, the police not only registered the FIR bearing Crime No.30/2025, but also investigated the case without obtaining permission from the concerned Magistrate, which is completely contrary to the provisions contained in Section 174 of the BNSS. She would further submit that, although the Children Court has observed in the impugned order that, pursuant to the application filed by the police along with the case diary/*Istgasa*, permission for investigation and arrest of the applicant was granted on 08.12.2025, and thereafter, the investigation was carried out and the charge-sheet was filed against the applicant/accused, but the same cannot rectify the initial defect in the investigation, as the documents show that, prior to seeking permission of the Court, a major part of the investigation had already been carried out by the police. Hence, she submits that the impugned order dated 08.04.2026 passed by the Children Court is perverse and

illegal and, therefore, deserves to be quashed. Consequently, Criminal Case No.02/2025 be quashed and the applicant/accused be discharged from the aforesaid case.

5. Per contra, learned counsel for the State supports the impugned order dated 08.04.2026 passed by the Children Court.

6. I have heard learned counsel for the parties and perused the material available on record.

7. Perusal of the case diary made available by the State counsel and documents filed by the applicant/accused show that, on the basis of the written complaint made by the Ward Councillor- Manoj Shah, FIR bearing Crime No. 30/2025 was registered on 06.07.2025 against the applicant/accused for the offences under Section 115(2) of the BNS and Section 75 of the Act, 2015, wherein the date of the incident has been mentioned as 05.07.2025. As per Section 115(2) of the BNS, the aforesaid offence is non-cognizable, bailable and triable by any Magistrate. Likewise, Section 75 of the Act, 2015 provides for punishment for cruelty to children on various counts. As per the facts of the instant case, the act of the applicant/accused would fall under the second proviso to Section 75 of the Act, 2015, which provides for punishment with rigorous imprisonment for a term which may extend upto five years, and fine which may extend upto five lakh rupees. Earlier, as per the provisions of Section 86 of the Act, 2015, an offence punishable under the Act, 2015, with imprisonment for a term of three years and above, but not more than seven years, then such offence was cognizable, non-bailable and triable by a Magistrate of the First Class. However, the aforesaid provision of Section 86 of the Act,

2015 was amended with effect from 01.09.2022. Thereafter, Section 86 of the Act, 2015 provides as under:-

> "**86. Classification of offences and designated court.-** (1) Where an offence under this Act is punishable with imprisonment for a term of more than seven years, then, such offence shall be cognizable and non-cognizable.
>
> (2) Where an offence under this Act is punishable with imprisonment for a term of three years and above, but not more than seven years, then, such offence shall be non-cognizable and non-bailable.
>
> (3) Where an offence, under this Act is punishable with imprisonment for less than three years or with fine only, then, such offence shall be non-cognizable and bailable.
>
> (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or the Commission for Protection of Child Rights Act, 2005 (4 of 2006) or the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), offences under this Act shall be triable by the Children's Court."

8. Thus, a perusal of the provisions of Section 86(2) shows that offences punishable with imprisonment for a term of three years and above, but not more than seven years under the Act, 2015, shall be non-cognizable and non-bailable. Since the aforesaid provision in respect of Section 75 of the Act, 2015 was amended prior to the date of incident of instant case, therefore, at the time of incident of instant case and lodging of the FIR, i.e., 05-06.07.2025, the offence under Section 75 of the Act, 2015 was non-cognizable. Accordingly, it is found that, on the aforesaid date, both the offences, i.e., the offence under Section 115(2) of the BNS and the offence under Section 75 of the Act, 2015, registered against the applicant/accused, were non-cognizable.

9. Section 174 of the BNSS provides for the procedure to investigate cases pertaining to non-cognizable offences, which is reproduced as under:-

> **"174. Information as to non-cognizable cases and investigation of such cases.** (1) When information is given

> to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may by rules prescribe in this behalf, and,-
>
> (i) refer the informant to the Magistrate;
>
> (ii) forward the daily diary report of all such cases fortnightly to the Magistrate.
>
> (2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.
>
> (3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.
>
> (4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable."

10. A perusal of the aforesaid provision shows that, if any information regarding a non-cognizable offence is received by a Police Officer, then, before investigating the case, he is required to enter the substance of the information in a book to be kept by such Officer in such form as the State Government may prescribe by rules in this behalf, i.e., in the *Roznamcha*, and thereafter, by producing the same before the concerned Magistrate, obtain permission for conducting further investigation. However, a perusal of the case diary, FIR and other documents of the instant case shows that, before obtaining permission from the Children Court on 08.12.2025, not only the FIR had been lodged by the police, but the spot map had also been prepared, the medical examination of the victim had been conducted and the statements of witnesses had already been recorded. This means that all substantive parts of the investigation had already been carried out in respect of the non-cognizable offences registered against the applicant/accused. In such circumstances, obtaining permission from

the Children Court, subsequent to the substantive investigation, vide order dated 08.12.2025, cannot rectify the initial defect in the investigation; rather, in view of above, it is found that the Investigating Officer had not obtained prior permission from the concerned Magistrate / Children Court under Section 174 of the BNSS before investigating the case. Thus, the investigation/charge-sheet filed by the prosecution/police of Police Station Bacheli suffers from grave illegality. Therefore, Criminal Case No.02/2025 (*State of Chhattisgarh vs. Smt. Khushbu Kumari*) cannot be sustained. However, the learned Children Court, without considering the aforesaid legal position, has mechanically rejected the application filed by the applicant/accused. Hence, the impugned order deserves to be set aside.

11. Accordingly, this revision petition is allowed. The impugned order dated 08.04.2026 passed by the Children Court, South Bastar, C.G. in Criminal Case No.02/2025 (*State of Chhattisgarh vs. Smt. Khushbu Kumari*) is hereby set aside / quashed. Consequently, the charge-sheet filed against the applicant/accused and the consequential criminal proceedings in Criminal Case No.02/2025 are also hereby quashed. The applicant/accused stands discharged from the aforesaid case.

12. Pending interlocutory application(s), if any, also stand disposed of.

Sd/-
(Naresh Kumar Chandravanshi)
Judge

Akhilesh