

GAHC010168762024



2024:GAU-AS:10973-DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Ref./1/2024

IN RE: XXX

VERSUS

1.THE STATE OF ARUNACHAL PRADESH,
REPRESENTED BY THE PUBLIC PROSECUTOR, ARUNACHAL PRADESH.

2:THE STATE OF ASSAM,
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM.

3:THE STATE OF NAGALAND,
REPRESENTED BY THE PUBLIC PROSECUTOR, NAGALAND.

4:THE STATE OF MIZORAM,
REPRESENTED BY THE PUBLIC PROSECUTOR, MIZORAM.

- BEFORE -

HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE DEVASHIS BARAUH

For the Petitioner(s) : Mr. T.J. Mahanta, Senior Advocate/ Standing Counsel, Gauhati High Court assisted by Ms. P. Sarma and Ms. P.P. Das, Advocates.

For the Respondent(s) : Mr. I. Chowdhury, Advocate General, Arunachal Pradesh, assisted by Mr. A. Chandran, Additional Senior Government Advocate, Arunachal Pradesh.

: Mr. D. Saikia, Advocate General, Assam, assisted by Mr. M. Phukan, Public Prosecutor, Assam and Ms. P. Barua, Advocate.

: Ms. M. Kechii, Additional Advocate General, Nagaland.

: Ms. P. Bhattacharyya, Additional Advocate General, Mizoram.

Date of Hearing : 04.11.2024

Date of judgment : 11.11.2024

JUDGMENT & ORDER (CAV)

(Vijay Bishnoi, CJ)

Heard Mr. T.J. Mahanta, learned Senior Counsel/ Standing Counsel, Gauhati High Court, assisted by Ms. P. Sarma and Ms. P.P. Das, learned counsel for the petitioner. Also heard Mr. I. Chowdhury, learned Advocate General, Arunachal Pradesh, assisted by Mr. A. Chandran, learned Additional Senior Government Advocate, Arunachal Pradesh, appearing for the respondent No.1; Mr. D. Saikia, learned Advocate General, Assam, assisted by Mr. M. Phukan, learned Public Prosecutor, Assam and Ms. P. Barua, learned counsel appearing for the respondent No.2; Ms. M. Kechii, learned Additional Advocate General, Nagaland, appearing for the respondent No.3 and Ms. P. Bhattacharyya, learned Additional Advocate General, Mizoram, appearing for the respondent No.4.

2. This Bench is constituted to answer the following question referred to it by the learned Single Judge of this Court (Itanagar Permanent Bench) vide order dated 08.08.2024 passed in ***Crl.Petn. No.112/2024, BA No.78/2024, AB No.108/2024, AB No.110/2024, Crl.Petn. No.113/2024, Crl.Petn. No.115/2024 and Crl. Petn. No.116/2024*** :

“As to whether an application for pre-arrest or regular bail or Criminal Petition would be filed under Section 438/439/482 of the Code of Criminal Procedure, 1973 (now repealed), if the FIR is registered prior to 01.07.2024 i.e. before coming into force of the BNSS, 2023, or the same are liable to be filed under the provisions of Section 482 and 528 of the BNSS, 2023 in view of the saving clause provided under Section 531(2)(a) and 358 of the BNSS, 2023.”

3. Without going into the much detail, we deem it appropriate to mention

the relevant facts, which led to make this reference, are that a learned Single Judge of this Court in ***Sanjit Kar Vs. The State of AP***, reported in ***2024 Supreme (OnLine) (Gau) 1135*** [AB No.102/2024, order dated 19.07.2024], while relying on the decision passed by a Single Judge of Rajasthan High Court rendered in ***Krishan Joshi Vs. State of Rajasthan***, reported in ***2024 Supreme (OnLine) (Raj) 200*** [CRLMP No.4285 /2024, dated 09.07.2024], has held that the petition seeking pre-arrest bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter to be referred as the BNSS) be treated as one under Section 438 of the Code of Criminal Procedure, 1973 in connection with a case registered at Namsai Police Station prior to commencement of the BNSS. In ***Sanjit Kar*** (supra), the petitioner preferred a bail application under Section 482 of the BNSS seeking pre-arrest bail in relation to an offence committed and registered before 01.07.2024, the day when the BNSS came into force.

4. While recording his disagreement with the view expressed in ***Sanjit Kar*** (supra), the learned Single Judge has made the above referred reference vide order dated 08.08.2024. The learned Single Judge, while referring to the various decisions of different High Courts, has observed that he disagrees with the view expressed and the decision and observations made by Co-ordinate Bench of this Court in the case of ***Sanjit Kar*** (supra). He further observed that, however, as there are conflicting opinions of various High Courts on the issue of interpretation of Section 531 of the BNSS, 2023, it is appropriate to place the matter before the Hon'ble Chief Justice for referring the matter before the Division Bench or a Larger Bench.

SUBMISSIONS:-

5. Mr. T.J. Mahanta, learned Senior Counsel/ Standing Counsel, Gauhati High Court, Mr. D. Saikia, learned Advocate General, Assam, Mr. I. Chowdhury, learned Advocate General, Arunachal, Ms. M. Kechii, learned Additional Advocate General, Nagaland and Ms. P. Bhattacharyya, learned Additional Advocate General, Mizoram have submitted that the various High Courts have expressed their views that the saving clause Sub-Section (2) of Section 531 of the BNSS saves only pending appeal, application, trial, inquiry or investigation and therefore, any appeal, application, trial, inquiry or investigation commences after coming into force of the BNSS, 2023, is required to be dealt with as per the provisions of the BNSS. It is submitted on behalf of the parties that the reference be answered in affirmative and it should be held that any application for pre-arrest or regular bail or criminal petition filed after commencement of the BNSS, 2023, even in connection with an FIR registered prior to 01.07.2024, i.e. the date when the BNSS, 2023 came into force, should be filed under the provisions of Section 482 and 528 of the BNSS, 2023.

6. However, Mr. D. Saikia, learned Advocate General, Assam has referred to the decision of the Full Bench of Gujarat High Court rendered in ***Hiralal Nansa Bhavsar & Anr. Vs. the State of Gujarat***, reported in ***1974 SCC online Guj 65*** [Criminal Appeal No.279/1974, dated 03.05.1974] and has argued that the Gujarat High Court while dealing with the saving provision i.e. Section 484 of Code of Criminal Procedure, 1973, has delivered the above referred judgment and the same may also be taken into consideration as it may have some bearing on the issue involved.

DISCUSSIONS:-

7. The Code of Criminal Procedure, 1973 ((2 of 1974) stood repealed with the enforcement of the BNSS, 2023 i.e. coming into force of the BNSS from 01.07.2024.

The repealed and saving clause of BNSS reads as under:

“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 or 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.”*

8. The Crime Investigation Department (CID) Headquarters, Assam has also issued a Memorandum containing instructions on implementation of New

Criminal Major Laws.

The said memorandum reads as under:

**“CRIME INVESTIGATION DEPARTMENT (CID) HEADQUARTERS
ASSAM :: ULUBARI :: GUWAHATI**

Dated Guawhati, the 1st July, 2024

**Sub:- Instructions on implementation of New Criminal Major Laws-
Regarding**

The New Criminal Laws are implemented in the State of Assam w.e.f. 01-07-2024.

2) *In this connection, in view of the ambiguity in registration of cases with regard to the Date of Occurrence of the offence and Date of Registration of crime w.e.f. 01-07-2024, a table highlighting the said ambiguity is enumerated for clarity in Registration of Cases subsequent to the implementation of New Criminal Laws:*

Date of Occurrence of Crime	Date of Registration	Provisions of Laws to be applied	Procedural Law to be followed
Prior to 1st July, 2024	Prior to 1st July, 2024	IPC	Cr.P.C
Prior to 1st July, 2024	After 1st July, 2024	IPC	BNSS
On or After 1st July, 2024	On or After 1st July, 2024	BNS	BNSS
Before 1st July, 2024 and continued after 1st July, 2024	On or After 1st July, 2024	BNS	BNSS

3) *All are requested to forward the said instructions to their field level officers*

for effective implementation of the New Criminal Laws.

(M.P. Gupta)

Addl. Director General of Police, CID

Assam, Guwahati

No.CID/Cell-VII/Law/F. No.80/112

Dated 01.07.2024”

9. It is the golden rule of interpretation that words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning. The words of statute must prima facie be given their ordinary meaning and when the words of statute are clear, plain and unambiguous then the Courts are bound to give effect to that meaning irrespective of consequences unless such construction leads to absurdity or contrary to object of statute.

In this regard, the Hon'ble Supreme Court has rendered decisions from time to time reiterating the above settled principle of law. Reference can be made to the decisions of the Constitutional Benches of the Hon'ble Supreme Court rendered in ***Lalita Kumari Vs. State of U.P. & Ors.***, reported in **(2014) 2 SCC 1** and ***Dr. Jaishri Laxmanrao Patil Vs. Chief Minister & Ors.***, reported in **(2021) 8 SCC 1**.

10. Now, applying the said principle, if we go through the language of Section 531 of the BNSS, we do not find any ambiguity in it and a literal interpretation of it will not be contrary to the object of the BNSS.

11. A plain reading of the provisions of Section 531 of the BNSS, more particularly, saving clause, Sub-Section (2)(a) clearly suggests that any appeal, application, trial, inquiry or investigation pending, immediately before the date

on which the BNSS comes into force, are liable to be disposed of, continued, held or made, as the case may be, in accordance with the Code of Criminal Procedure, 1973 (2 of 1974), as in force immediately before such commencement, as if the BNSS has not come into force.

In other words, Section 531(2)(a) of the BNSS clearly saves only appeal, application, trial, inquiry or investigation pending prior to commencement of the BNSS and provide that the same shall be disposed of, continued, held or made, as the case may be, in accordance with the Code of Criminal Procedure, 1973 (2 of 1974), however, the proceedings continued after coming into force of BNSS are not saved.

12. We are of the view that if the above referred provision is interpreted differently, it would lead to unjust results which legislature never intended.

13. It is to be kept in mind that right of filing pre-arrest bail or regular bail or criminal petition for quashing an F.I.R., are the rights which exist in procedural law.

14. In *Hitendra Vishnu Thakur & Ors. Vs. State of Maharashtra & Ors.*, reported in (1994) 4 SCC 602, the Hon'ble Supreme Court has observed that while right to forum and limitation is procedural in nature, while right of appeal and right of action is substantive in nature. It is further observed that litigants have a vested right in substantive law but no such right exists in procedural law.

The relevant paragraph of *Hitendra Vishnu Thakur's* case (supra) is reproduced hereunder:

“26. The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation

was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the court. From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:

(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."

15. The same position of law is again reiterated by the Hon'ble Supreme Court in **Neena Aneja & Anr. Vs. Jai Prakash Associates Ltd.**, reported in **(2022) 2 SCC 161**.

The relevant paragraph of **Neena Aneja's case** (supra) is extracted hereunder:

"72. In considering the myriad precedents that have interpreted the impact of a change in forum on pending proceedings and retrospectivity- a clear position of law has emerged : a change in forum lies in the realm of procedure. Accordingly, in compliance with the tenets of statutory interpretation applicable to procedural law, amendments on matters of procedure are retrospective, unless a contrary intention emerges from the statute....."

16. The Full Bench decision of Gujarat High Court in **Hiralal Nansa Bhavsar** (supra) is in respect of right of appeal. The said judgment decides only

the question to the substantive right of a convicted person to appeal in the light of settled principle that the appeal is in continuation of the trial.

As observed earlier, filing an application for pre-arrest bail or regular bail or for quashing of FIR are rights recognized under the procedural law and not the rights under the substantive law.

17. The different High Courts have expressed the same view. In this regard, reference can be made to following decisions:

- (i) ***XXX Vs. State of U.T. Chandigarh & Anr.*** rendered by High Court of Punjab and Haryana in CRM-M-31808-2024, dated 11.07.2024.
- (ii) ***Prince Vs. NCT, Delhi, reported in (2023) DLT 714*** rendered by Delhi High Court.
- (iii) ***Mr. Banmiki Suna @ Lik Suna Vs. State of Meghalaya and other connected bail applications,*** rendered by High Court of Meghalaya [AB No.12 of 2024 and other connected bail applications, dated 27.08.2024].
- (iv) ***Chowgule and Company Pvt. Ltd. Vs. the Public Prosecutor, Goa*** in Criminal Writ Petitions 618/619 of 2024 rendered by Bombay High Court, dated 02.08.2024.
- (v) ***Abdul Khader Vs. State of Kerala, reported in 2024 SCC OnLine Ker 3919*** rendered by High Court of Kerala in Criminal Appeal No.1186/2024, dated 15.07.2024.

18. The Division Bench of Allahabad High Court, while interpreting Section 531 of the BNSS, 2023 has expressed the same view in ***Criminal Misc. Writ***

Petition No.12287 of 2024 [Deepu & Ors. Vs. State of U.P. & Ors., order dated 06.08.2024].

The relevant portion of the above referred judgment is extracted hereunder:

“8. From the perusal of the above section, it is clear that, if any, investigation is pending on the date of repeal of Cr.P.C. then same will continue as per Cr.P.C. As per Section 157 Cr.P.C. (Section- 176 BNSS) investigation would start from the date of registration of F.I.R., therefore if F.I.R. is registered before commencement of new criminal laws then the procedure of the investigation will continue as per the Cr.P.C. because investigation will be deemed to be commenced on the date of registration of the F.I.R. However, in case the F.I.R. is registered after the commencement of new criminal laws for the offence committed prior to the enforcement of new criminal laws then the F.I.R. would be registered under the provision of I.P.C. as the I.P.C. is a substantive law which was prevalent at the time of committing the offence because as per Article 20 of the Constitution of India a person can be convicted of an offence for the violation of law enforced at the time of the commission of the act.”

9. However, the question arises, what would be the procedure of investigation, if the F.I.R. is registered after the commencement of new criminal laws for the offence committed prior to the enforcement of new criminal laws, as such investigation is not saved by Section 531(2)(a) of the BNSS to be conducted as per Cr.P.C. To decide this issue, it is relevant to consider Section 6 of General Clauses Act which provides effect of repealing of any Central Act or Regulation. Section 6 of General Clause Act, 1897 is being quoted as under;

“6. Effect of repeal.- Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not--

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right,

privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, any any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

10. From the perusal of [Section 6](#) of the General Clauses Act, it appears that the repeal of [Cr.P.C.](#) shall not affect any investigation, legal proceeding or remedy in respect of any liability, penalty or punishment accrued or incurred under the repealed Act and such investigation, legal proceeding or remedy will continue under the repealed Act. It is also clear from [Section-6](#) of the General Clauses Act, the repeal of [I.P.C.](#) or [Cr.P.C.](#) will not affect any right, liability accrued or incurred under the repealed Act. Therefore, despite repealing of [IPC](#) and [Cr.P.C.](#), liability to get punishment under [IPC](#) will continue and remedy like an appeal under [Cr.P.C.](#) will remain as it is but the forum of appeal being procedural in nature will be as per the B.N.S.S."

19. After taking into consideration the decisions rendered by the Hon'ble Supreme Court in ***Hitendra Vishnu Thakur*** (supra) and ***Neena Aneja*** (supra), the Division Bench of Allahabad High Court held as follows:

"14. From the above-discussed case, the following legal position is culled out:

(i) that amended/repealed procedural law will be applicable retrospectively unless otherwise provided in the new Act itself;

(ii) liability or right accrued under the repealed Act will not be affected and same will continue as if the repealing Act did not come into force;

(iii) procedure of investigation, trial, revision and appeal as well as a forum of remedy is part of procedural law, and the same will be applicable retrospectively unless otherwise provided in the new procedural law;

(iv) Litigants have no vested right in procedural law but has vested right in substantive law with accrued right or liability. The statute which not only changes the procedure but also creates new rights and liabilities, shall be construed to be prospective in nature unless otherwise provided.

15. From the above analysis it is clear that if any offence is committed prior to the enforcement of new criminal laws, then if the F.I.R. is registered after the enforcement of new criminal laws, then the same will be registered under the provision of I.P.C. in view of the Article 20 of the Constitution of India, but the procedure for the investigation will be as per the BNSS. Similarly, in case the offence is committed after the enforcement of new criminal laws and thereafter the F.I.R. is registered, then the investigation would be conducted as

per the BNSS. However, in case the offence is committed prior to the enforcement of new criminal laws, and F.I.R. is also registered prior to enforcement of new criminal laws then the procedure of investigation would be as per the Cr.P.C. in view of Section 531(2)(a) of the BNSS. Therefore, the procedure of investigation provided by the circular dated 7.4.2024 of the Police Technical Services Headquarters, U.P. is absolutely correct.

16. *On the basis of above analysis, this Court is also summarising the law regarding effect of repealing the IPC and Cr.P.C. by BNS and BNSS respectively and same is being mentioned as below:*

(i) If an FIR is registered on or after 1.7.2024 for the offence committed prior to 1.7.2024, then FIR would be registered under the provisions of IPC but the investigation will continue as per BNSS.

(ii) In the pending investigation on 01.07.2024 (on the date of commencement of New Criminal Laws), investigation will continue as per the Cr.P.C. till the cognizance is taken on the police report and if any direction is made for further investigation by the competent Court then same will continue as per the Cr.P.C.;

(iii) The cognizance on the pending investigation on or after 01.07.2024 would be taken as per the BNSS and all the subsequent proceeding including inquiry, trial or appeal would be conducted as per the procedure of BNSS.

(iv) Section 531(2)(a) of BNSS saved only pending investigation, trial, appeal, application and enquiry, therefore, if any trial, appeal, revision or application is commenced after 01.07.2024, the same will be proceeded as per the procedure of BNSS.

(v) The pending trial on 01.07.2024, if concluded on or after 01.07.2024 then appeal or revision against the judgement passed in such a trial will be as per the BNSS. However, if any application is filed in appeal, which was pending on 01.07.2024 then the procedure of Cr.P.C. will apply.

(vi) If the criminal proceeding or chargesheet is challenged before the High Court on or after 01.07.2024, where the investigation was conducted as per Cr.P.C. then same will be filed u/s 528 of BNSS not u/s 482 Cr.P.C.”

20. We are in perfect agreement with the view expressed by Division Bench of Allahabad High Court in **Deepu** (supra).

21. It is also to be noted that the Single Bench of Rajasthan High Court who has delivered the judgment in **Krishan Joshi** (supra) has clarified the doubt in subsequent judgment rendered in **Vijay Sharma & Anr. Vs. State of**

Rajasthan, through PP, (S.B. Criminal Misc (Pet) No.5522/2024, dated 21.08.2024) and has observed as follows:

19. Let us now move on to the question of procedure applicable to an FIR registered after enforcement of *Bhartiya Nagrik Suraksha Sanhita (BNSS)* for offences under IPC committed before 01.07.2024. Sub section (2) of section 531 BNSS provides, inter alia, that notwithstanding the repeal of Code of Criminal Procedure:

(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."

20. It would be seen that clause (a) *ibid* is attracted only if there is any appeal, application, trial, inquiry or investigation pending at the time of enforcement of the BNSS on 01.07.2024.

21. Section 531(2)(a) of BNSS has saved only pending investigation, trial, appeal, application and enquiry, therefore, if any trial, appeal, revision or application has commenced after 01.07.2024, the same will be proceeded as per the procedure of BNSS. In other words, if there was no investigation pending when BNSS came into force, then the saving clause 531(2)(a) of BNSS would not be attracted.

22. Moreover, as per Section 157 Cr.P.C. (Section 176 BNSS) investigation would start from the date of registration of F.I.R. Accordingly, if F.I.R. itself is registered on or after 01.07.2024, i.e. after enforcement of BNSS, obviously the investigation would start only after it's registration i.e. after the enforcement of BNSS. In other words there would be no investigation pending at the time of enforcement of the BNSS on 01.07.2024. No question would, therefore, arise for the applicability of clause (a) *ibid* in such a case as there was no investigation pending on 01.07.2024.

23. In fact, Division Bench of Allahabad High Court has already expressed similar view in *Deepu & ors., supra*. While doing so, it also quoted with approval the view taken in the case of **XXXX Vs. State of Union Territory of Chandigarh and Anr.** (CRM-Misc. Pet-31808-2024, dated 11.07.2024) which was subsequently relied upon by the Kerala High Court in the case of **Abdul Khadir Vs. State of Kerala (Crl. Appeal No.1186 of 2024 dated 15.07.2024)** to the effect that the provisions of Section 4 and Section 531 of BNSS, 2023 are mandatory in nature as a result whereof any appeal /

application / revision / petition / trial / inquiry or investigation pending before 01.07.2024 are required to be disposed of continued, held or made (as the case may be) in accordance with the provision of Code of Criminal Procedure, 1973. In other words; any appeal/application /revision /petition filed on or after 01.07.2024, is required to be filed/instituted under the provision of BNSS 2024.

24. *In view of the above discussion, I am of the opinion that in respect of an FIR registered on or after 01.07.2024 for offences under IPC committed before 01.07.2024, the applicable procedure shall be as prescribed in the Bhartiya Nagrik Suraksha Sanhita (BNSS). Question (c) formulated in the earlier part of the judgment is answered accordingly.*

25. *In **Krishan Joshi Vs. State of Rajasthan**, relied upon by learned counsel for the petitioner, the FIR was registered on 02.02.2024 under section 406/420 of IPC. It is inter alia observed therein that saving clause in Section 531(2) [of BNSS] stipulates that notwithstanding the repeal [of Code of Criminal Procedure], 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. It was held that if an FIR is registered prior to 01.07.2023 (sic 2024) under the Cr.P.C., it would amount to a pending inquiry / investigation within the meaning of section 531(2)(a) of BNSS. It was also observed that in view of Section 531(2)(a) of the BNSS, it was amply clear that all the pending matters prior to coming into force of BNSS, 2023, as specifically mentioned therein, shall continue to be governed by the old Code i.e. Cr.P.C., 1973.*

26. *In Krishan Joshi case, the FIR was registered on 02.02.2024. Petition itself was initially filed on 01.07.2024 for quashing the FIR. Thus, the quashing petition (filed on 01.07.2024) was not pending though investigation of the FIR was pending prior to coming into force of BNSS, 2023. The quashing petition filed on 01.07.2024 was thus not covered by the saving provisions of clause (a) of sub section (2) of section 531 of the BNSS, required to be disposed of in accordance with the Cr.P.C. By mistake, however, it was held that the petition for quashing of the FIR had to be treated under Section 482 Cr.P.C.”*

CONCLUSION:-

22. In view of the discussions made hereinabove, the referred question is answered as follows:

Any pre-arrest or regular bail or Criminal Petition, filed after

01.07.2024 in connection with an FIR registered prior to 01.07.2024 i.e. before coming into force of the BNSS, 2023, are liable to be filed, under the provisions of Section 482, 483 and 528 of the BNSS, 2023 respectively.

23. The Registry is directed to treat all pre-arrest bail/regular bail/Criminal Petitions filed after 01.07.2024 in respect of an FIR registered prior to 01.07.2024 to be filed under Section 482, 483 and 528 of the BNSS, 2023 respectively.

JUDGE

CHIEF JUSTICE

Comparing Assistant