



2025:AHC:175201

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 30953 of 2025

Vivek Yadav And 4 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Anurag Yadav, Sanjay
Kumar Yadav

Counsel for Opposite Party(s) : G.A.

Court No. - 72

HON'BLE DEEPAK VERMA, J.

1. Heard learned counsel for the applicants; learned AGA for the State and perused the record.

2. The present 528 BNSS application has been filed to quash the charge sheet dated 05.06.2024, Cognizance and summoning order dated 19.04.2025 as well as the entire proceedings of Case No. 389 of 2025 (State Vs. Vivek Yadav and others), arising out of case Crime No. 90 of 2024, under section 147, 452, 323, 504, 506, 307 IPC, P.S. Shahganj, District-Jaunpur pending before the Additional Chief Judicial Magistrate, 5 Jaunpur.

3. As per F.I.R. allegation, applicants and named accused persons entered into the house of the informant and assaulted him, as a result thereof, he received grievous injury. Counsel for the applicants submits that applicants are innocent and have been falsely implicated in the present case. The allegation alleged in the F.I.R. is false and baseless. Instant F.I.R. has been lodged as counter blast. Prima facie, there is no evidence against the applicants to prosecute them in the present case. During investigation, the I.O. has not collected any material evidence but submitted charge sheet against the applicants. The learned Magistrate without applying judicial mind, summoned the applicants. He further submits that no prosecution could proceed

against the applicants, in such circumstances.

4. Per contra, learned A.G.A. opposed the submission and submitted that I.O. has collected sufficient material evidence against the applicants. The medical examination report is supporting the prosecution case and injured has received grievous injury on vital part of the body.

5. The grounds taken in the application reveal that many of them relate to disputed question of fact. This Court is of the view that it is well settled that the appreciation of evidence is a function of the trial court. This Court in exercise of power under Section 528 BNSS cannot assume such jurisdiction and put an end to the process of trial provided under the law. It is also settled by the Apex Court in catena of judgments that The impugned criminal proceeding against the applicants is abuse of the process of the Court and is liable to be quashed by this Court. The power under Section 528 BNSS at pre-trial stage should not be used in a routine manner but it has to be used sparingly, only in such an appropriate cases, where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceedings or where allegations made in First Information Report or charge-sheet and the materials relied in support of same, on taking their face value and accepting in their entirety do not disclose the commission of any offence against the accused. The disputed questions of facts and defence of the accused cannot be taken into consideration at this pre-trial stage.

6. From the perusal of the material on record and looking into the facts of the case, at this stage, it cannot be said that no offence is made out against the applicants. The learned Magistrate has rightly summoned the applicants in the aforesaid case. All the submissions made at the bar relate to the disputed questions of fact, which cannot be adjudicated upon by this Court under Section 528 BNSS.

7. In view of the above, in the light of judgment of the Apex Court in the matters of **R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, Manik B. Vs. Kadapala Sreyes Reddy & Anr. 2023 LiveLaw (SC) 642, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs.**

P.P.Sharma, 1992 SCC (Cr.) 192 and lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283, no ground for quashing the proceedings of the aforesaid case, is made out which may call for any interference by this Court in exercise of its inherent power under Section 528 BNSS.

8. The present application under Section 528 BNSS lacks merit and is, accordingly, **dismissed**.

September 26, 2025
Meenu Singh

(Deepak Verma,J.)