

Reserved on 29.8.2025
Delivered on 9.9.2025



2025:AHC:158357

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 32081 of 2025

Photu Lal

.....Petitioners(s)

Versus

State Of U.P. And 2
Others

.....Respondents(s)

Counsel for Petitioners(s)	:	Bhanu Pratap Singh, Ravindra Sharma
Counsel for Respondent(s)	:	G.A.

Court No. - 73

HON'BLE DINESH PATHAK, J.

1. Heard learned counsel for the applicant, learned AGA and perused the record on board.

2. The applicant has invoked the inherent jurisdiction of this Court under Section 528 BNSS for the quashing the order dated 5.4.2025 passed by learned Special Sessions Judge (SC/ST Act), Pilibhit on the application No. 50Ka dated 17.2.2025, filed by the present applicant (first informant) under Section 216 CrPC, praying for addition of a new charge under Section 452 IPC, in Special Session Trial No. 62/2018 (State vs. Rajnish Yadav and another), under Sections 427, 504 IPC and Section 3(1)(da) SC/ST Act, arising out of Case Crime No. 0588/2017, Police Station Kotwali, District Pilibhit, pending in the court of learned Special Sessions Judge (SC/ST Act), Pilibhit, whereby application under Section 216 CrPC moved on behalf of the present applicant has been rejected.

3. As per FIR version:- (i) a few days ago, the complainant purchased a car, which he usually parked outside his house without causing any

obstruction to traffic or passage. However, his neighbour, Mr. Rajneesh Yadav alias Pintu Yadav, son of Dhara Singh, who resides next to him, frequently quarreled with him over the car parking issue. He repeatedly explained to Mr. Rajneesh Yadav that he is constructing a garage, which will be completed within a month.

(ii) However, on 23.10.2017 at around 7:30 AM, Mr. Rajneesh Yadav intentionally hit the complainant's car with his own causing damage. Hearing the noise, he came outside his house and asked Mr. Rajneesh why he damaged his car. At that moment, Mr. Rajneesh Yadav, along with two of his associates (whose names are not known to the complainant) and his mother, started abusing the complainant using filthy language and said, "Saale kanjar, how dare you compare yourself with us!"

(iii) Hearing the commotion, his wife also came outside, and the accused persons started hurling caste-based slurs, publicly humiliating both of them. He and his wife repeatedly tried to calm them down, but they were furious and became physically aggressive.

(iv) When the complainant and his wife tried to escape and ran inside their house, all four of the accused persons forcefully entered their home, started damaging household items, and Mr. Rajneesh Yadav pulled out a pistol from his pocket and placed it on complainant's temple, threatening: "Saale kanjar, sell this house and run away, or else I will kill you and your entire family!"

(v) At this point, several local residents from the colony gathered and rescued him and his wife from the accused person's assault. He immediately dialled 100 (police helpline), and the police vehicle No. 2053 arrived at the spot. However, Mr. Rajneesh Yadav and his associates misbehaved with the police as well, arrogantly saying, "His father is also in the police." The 100-dial police team left without providing any assistance.

4. Record evinces that Investigating Officer, after due investigation, has submitted the charge sheet No. 36 of 2017 on 22.12.2017 arraigning the

respondent No. 2 (Rajnish Yadav), under Sections 427, 504 IPC and 3(1)da of SC/ST Act. Learned court has taken cognizance by order dated 16.4.2018 and summoned the accused. Subsequently, charges against the respondent No. 2 has been framed by order dated 1.12.2018. It is apposite to mention here that first informant has moved an application under Section 319 CrPC, which was allowed by order dated 10.1.2020 calling upon Smt. Krishna Devi (respondent No. 3) to face trial along with the co-accused under Sections 427, 504 IPC and Section 3(1)da of SC/ST Act. Charges were framed against her as well, by order dated 26.7.2022, under those sections in which she has been summoned. During pendency of the trial, first informant (applicant herein) has moved an application dated 17.2.2025 under Section 216 CrPC (paper No. 50Ka) to frame additional charge for the offence under Section 452 IPC. The accused have opposed the aforesaid application and filed objection dated 19.3.2025 with an averment that false and fictitious grounds have been mentioned in application dated 17.2.2025 (paper No. 50Ka). The accused came with the case that site map was prepared on the statement of first informant and no material has been collected to substantiate the allegation of house trespass under Section 452 IPC which has been sought to be added as a new charge. After hearing the parties, the learned Special Session Judge, SC/ST Act, Pilibhit has rejected the application under Section 216 CrPC (paper No. 50Ka), vide order dated 5.4.2025, which is under challenge before this Court.

5. Learned counsel for the applicant submits that the First informant in his statement under Section 161 CrPC has supported the FIR version that accused have barged into his house and vandalized the same. In his deposition, being PW-1, the first informant has unequivocally stated that the accused entered the house and damaged the household articles/goods lying therein. Learned counsel for the applicant has also laid emphasis on the statement of Smt. Rakha Rani, wife of the first informant, who has entered into the witness box and deposed as PW-2. She has supported the case of the house trespass committed by the accused on the date of the incident. Learned counsel for the applicant has

emphasized the portion of her cross-examination wherein she stated that she had made a statement before the Circle Officer that Krishna Devi, Rajnish, Ajeet Kumar and Kapil Chaudhary came and damaged the household articles/goods inside the house and put a country-made pistol at the temple of her husband. Learned counsel for the applicant has further submits that conjoint reading of the contents of the FIR and the deposition of PW-1 and PW-2, as well as the statement of first informant under Section 161 CrPC, prima facie, a case is made out for the offence under Section 452 IPC. However, the learned trial court has failed to exercise its discretionary power under Section 216 CrPC in right perspective and illegally rejected the application (paper No. 50Ka). Thus, learned counsel for the applicant has prayed to quash the order impugned being illegal, unwarranted under the law and tainted with irregularities, and allow the application (paper No. 50Ka) to add new charge under Section 452 IPC.

6. Per contra, learned AGA has vehemently opposed the submission advanced by the learned counsel for the applicant and contended that no material has been collected by the Investigating Officer to prima facie make out an offence under Section 452 IPC. Even the first informant has not supplied any credible material which could form the basis for the offence of house trespass committed by the accused. It is further contended that mere averment in the FIR and statement under Section 161 CrPC coupled with the deposition of the first informant as PW- 1, are not sufficient to prove the offence of house trespass unless convincing material is collected by the Investigating Officer to make out a case under Section 452 IPC. Learned AGA has emphasized on paragraph No. 7 of the order impugned wherein learned court has observed that other witnesses of fact, namely, Harish Kumar, Kapil Chaudhary and Ajeet Kumar have not been examined by the prosecution for the reasons best known to it. It is further contented that there is no abuse of the process of law to entertain the instant application under Section 528 BNSS, therefore, same is liable to be dismissed in limine being misconceived and devoid of merits.

7. Having considered the rival submissions advanced by the learned counsel for the applicant as well as learned AGA and upon perusal of the record, it manifests that, prima facie, neither any material has been collected by the Investigating Officer nor at the stage of deposition made by PW-1 and PW-2, any evidence has been adduced, prima facie, to disclose the commission of offence under Section 452 IPC for house trespass after preparation of hurt, assault or wrongful restraint. For ready reference, Section 452 IPC is reproduced hereinbelow:-

"Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting and person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

8. Thus, to prove the offence under Section 452 IPC, it must be established that the accused having made preparations for (i) causing hurt to any person, (ii) assault any person, (iii) wrongfully restraining any person, or (iv) putting any person in fear of hurt, assault, or wrongful restraint, trespassed into the house of the victim. While considering the ingredients of Section 452 IPC in the given circumstances of the present case, it is evident that as per FIR version, when the applicant and his wife attempted to escape and entered their house, all the four accused persons forcibly entered the home and began damaging household items. One of the accused, namely, Rajnish Yadav, allegedly pulled out a pistol from his pocket and placed it on complainant's temple and threatened him, stating, sell this house and leave or else I will kill you and your entire family. First informant in his statement under Section 161 CrPC has corroborates the FIR version, as reproduced hereinbelow:-

"Upon being asked, the informant supported the FIR and stated:

"Sir, on 28th August 2017, I had suffered a heart attack, due to which I was at home. On 12.10.2017, I purchased a car, and after buying it, out of jealousy, Rajneesh Yadav alias Pintu Yadav, son of Dhara Singh Yadav, started arguing with me. I explained to him that my garage is under construction and it would be completed within a month. He also agreed and accepted that, till

then, I would manage my car and park it carefully so that he wouldn't face any difficulty. The road was sufficiently wide, and there was no obstruction to his vehicle's movement. However, on 23.10.2017, at around 7:30 AM, he deliberately hit my parked car. Hearing the sound of the collision, my wife Rekha Rani and I came outside and asked why he intentionally damaged the car. At that moment, he, along with his mother and two unidentified individuals (whose names I do not know but I will recognize them when confronted), all the four accused with common motive entered the house and started damaging household items. Rajneesh Yadav alias Pintu Yadav pulled out a pistol, placed it on my temple, and threatened me, saying: "Saale kanjar, I will throw you out of here!" At that time, many people from the colony were watching this incident. They rescued us from their assault. Sir, I am currently posted as a Block Education Officer at Vikas Khand Nigohi, and my wife Rekha Rani is a teacher at U.P. Higher Secondary School, Sirsa. Due to our government duties, we frequently commute, and my son studies in Class 9 at Behamhar School. I have already informed the authorities about the threats posed to me and my family. At the time of the incident, the 100-dial police personnel and my brother-in-law, Prem Narayan, were also present. This is my statement."

Cross-Examination Questions:

Q: Today you are saying that colony residents rescued you, and your brother-in-law was also present. Give the names of those colony residents who helped you.

A: "Sir, I cannot give names; I do not know whether they will testify or not."

Q: Name at least one witness.

A: [Remained silent and did not respond.]"

9. Wife of the first informant, in her statement before the Investigating Officer, has supported the statement of her husband, however, she has not made allegation of house trespass that all four accused have entered the house and vandalized the same. It is apposite to mention that both the aforesaid witnesses, i.e. complainant (respondent no. 2) and his wife (alleged ocular witness), have not named any witness who could corroborate the allegation of house trespass as averred in the FIR. The statements of PW-1 (first informant), and PW-2 (his wife) have been filed along with the supplementary affidavit. In their examination-in-chief, PW-1 (first informant) and PW-2 (his wife) have reiterated the allegation of house trespass. However, they could not substantiate the same, prima facie, by any convincing evidence. It is apposite to mention, that Investigating Officer has prepared the site map based on the information received from the first informant. The site map dated

26.10.2017 (Annexure No. SA-2) evinces that letter "C" depicts the house of the first informant, letter "D" depicts the house of Dhaniram Maurya and letter "E" depicts the ramp coming down from the house of Dhaniram Maurya, where the vehicle was allegedly climbing in speed. Letter "B" has been depicted to show the place, where the vehicle of the accused was collided with the vehicle of the first informant, causing damage. In the site map, the Investigating Officer has marked the arrows in the complainant's house indicating the movement from inside to outside, towards the road, where the two vehicles allegedly collided. In third point, Investigating Officer has specifically mentioned that upon hearing the noise, the first informant came outside the house, where both the parties have exchanged expletives, and commotion erupted. However, in the site map, no incident is depicted to establish that four accused, as mentioned in the FIR and supported by statements under section 161 CrPC, barged into the house of the first informant, and vandalized it.

10. It is apposite to mention, that section 452 IPC, does not denote about the damage of the property or household articles; however, it addresses house trespass with the intent to cause harm, assault and wrongful restraint or put any person in fear of hurt, assault or of wrongful restraint. Regarding the matter at hand, one of the accused, namely, Rajnish Yadav, (respondent no. 2), is alleged to have put a country made pistol on the temple of the first informant, which may indicate an intent to instill the first informant fear of hurt. However, the essential ingredient of the offence of house trespass are not sufficiently established based on the material available on record.

11. Learned trial court, while rejecting the application, under Section 261 CrPC, has returned a categorical finding, that during his cross examination, the first informant, has said, that when the accused, had hit his car, for the first time, he came out from his house, and in his presence the accused dashed his car twice or thrice. Learned trial court has observed that in the normal course, it seems unreasonable that someone will dash the other's car, knowingly twice or thrice, because in that

process, he himself will also, suffer loss; thus, such conduct is hardly expected from a prudent person. Learned trial court has also placed reliance upon the photographs of the damaged car and returned a finding that the first informant failed to prove any materials/photographs to prima facie establish that which household articles/items has been damaged in his house, while accused allegedly barged into it.

12. Once the complainant was so conscious to take the photographs of the damaged car, it would have been natural for him that he should have also take the photographs of the damaged household articles. It is also a matter of concern that while the accused alleged to have entered the house, they neither beaten up the complainant and his wife nor hurled cast based slur against them. One of the accused had allegedly pulled out a pistol from his pocket and placed it on the temple of the first informant and threatened to kill him. In the absence of any material on record to, prima facie, establish that household articles/items have been damaged by the accused, it would be difficult to believe that the accused had barged into the house of the first informant after preparation for hurt, assault or wrongful restraint. If the aftermath of the alleged house vandalization has not be established by the first informant, the entry of the accused into the house in question becomes highly doubtful and cannot be proved unless strong and cogent evidence is placed on record. Mere general allegations made in the statement are not sufficient to prove the ingredients of house trespass after preparation for hurt, assault or wrongful restraint as enunciated under Section 452 IPC.

13. A cumulative reading of all the documents available on record i.e. copy of the FIR, statement of first informant and other witnesses under Section 161 CrPC, deposition of PW-1 and PW-2, copy of the charge sheet coupled with copy of site map, make me skeptical of the submission advanced by the learned counsel for the applicant that learned court below has failed to exercise its discretion under Section 216 CrPC to add new charge under Section 452 IPC for the offence of house trespass. In the case of **Ramanand Kannaujiya vs. State of UP and 11 others, Application U/S 528 BNSS No. 4615 of 2025, decided**

by this Court vide order dated 13.8.2025, natural citation No. 2025:AHC:138157, the nature and scope of Section 216 CrPC has been discussed along with the relevant verdicts of Hon'ble Supreme Court. Paragraphs No. 9, 10 and 11 of the order passed in the case of **Ramanand Kannaujiya (supra)** are reproduced hereinbelow:-

*"9. Needless to say that any court may alter or add a charge at any time before the judgment is pronounced; however, such power entrusted to the court is not unfettered and the same is subject to the evidence recorded during the course of trial before the court concerned. It is the duty of the court, while dealing with an application under Section 216 Cr.P.C., to ensure that addition, deletion or alteration of any charge does not encompass any prejudice or operation to the accused. The Hon'ble Supreme Court of India in the case of **Central Bureau of Investigation vs. Karimullah Osan Khan** reported in (2014) 11 SCC 538 has expounded in paragraph 18 that for adding or altering the charge, there must be some material before the court. Paragraph nos. 17 and 18 of the said judgment is quoted herein below :-*

17. Section 216 CrPC gives considerable power to the trial court, that is, even after the completion of evidence, arguments heard and the judgment reserved, it can alter and add to any charge, subject to the conditions mentioned therein. The expressions "at any time" and before the "judgment is pronounced" would indicate that the power is very wide and can be exercised, in appropriate cases, in the interest of justice, but at the same time, the courts should also see that its orders would not cause any prejudice to the accused.

18. Section 216 CrPC confers jurisdiction on all courts, including the Designated Courts, to alter or add to any charge framed earlier, at any time before the judgment is pronounced and sub-sections (2) to (5) prescribe the procedure which has to be followed after that addition or alteration. Needless to say, the courts can exercise the power of addition or modification of charges under Section 216 CrPC, only when there exists some material before the court, which has some connection or link with the charges sought to be amended, added or modified. In other words, alteration or addition of a charge must be for an offence made out by the evidence recorded during the course of trial before the court. (See Harihar Chakravarty v. State of W.B.) Merely because the charges are altered after conclusion of the trial, that itself will not lead to the conclusion that it has resulted in prejudice to the accused because sufficient safeguards have been built in in Section 216 CrPC and other related provisions."

*10. The Hon'ble Supreme Court in the case of **P. Kartikalakshmi vs. Sri Ganesh & Another** reported in (2017) 2 SCC (Cri.) 84 has elucidated the power of the Court under Section 216 Cr.P.C. and held that power under Section 216 Cr.P.C. vested in the Court is exclusive to the Court and there is no right in any party neither de facto complainant nor accused nor prosecution to seek such addition or alteration by filing an application as a matter of right. Relevant paragraph nos. 7 and 8 of the said judgment are quoted herein below :-*

"7. We were taken through Sections 221 and 222 CrPC in this context. In the light of the facts involved in this case, we are only concerned

with Section 216 CrPC. We, therefore, do not propose to examine the implications of the other provisions to the case on hand. We wish to confine ourselves to the invocation of Section 216 and rest with that. In the light of our conclusion that the power of invocation of Section 216 CrPC is exclusively confined with the Court as an enabling provision for the purpose of alteration or addition of any charge at any time before pronouncement of the judgment, we make it clear that no party, neither de facto complainant nor the accused or for that matter the prosecution has any vested right to seek any addition or alteration of charge, because it is not provided under Section 216 CrPC. If such a course to be adopted by the parties is allowed, then it will be well-nigh impossible for the criminal court to conclude its proceedings and the concept of speedy trial will get jeopardised.

8. In such circumstances, when the application preferred by the appellant itself before the trial court was not maintainable, it was not incumbent upon the trial court to pass an order under Section 216 CrPC. Therefore, there was no question of the said order being revisable under Section 397 CrPC. The whole proceeding, initiated at the instance of the appellant, was not maintainable. Inasmuch as the legal issue had to be necessarily set right, we are obliged to clarify the law as is available under Section 216 CrPC. To that extent, having clarified the legal position, we make it clear that the whole proceedings initiated at the instance of the appellant was thoroughly misconceived and vitiated in law and ought not to have been entertained by the trial court. As rightly pointed out by the learned Senior Counsel for Respondent 1, such a course adopted by the appellant and entertained by the court below has unnecessarily provided scope for protraction of the proceedings which ought not to have been allowed by the court below."

11. Hon'ble Supreme Court, in its recent judgement dated April 17, 2025 passed in Criminal Appeal No. 1319 of 2013 with Criminal Appeal No. 272 of 2014 (Director of Revenue Intelligence Vs. Raj Kumar Arora and others) has elucidated the scope of Section 216 CrPC, as follows:

143. Under this provision, any Court is empowered to "alter" or "add" to any charge framed against the accused, at any time before the judgment is pronounced. Therefore, an outer time limit is set i.e. the power conferred upon the Courts cannot be exercised after a decision is pronounced in the matter. Although the provision does not expressly provide for the stage of the trial after which the power under Section 216 CrPC can be exercised, yet logic and rationale obviously requires it to be exercised after a charge has been framed by the Trial Court under Section 228 CrPC. For if no charge has been framed, there arises no occasion to add or alter it. As a natural corollary, if an accused has already been discharged under Section 227 CrPC, no application or action under Section 216 CrPC would be maintainable.

144. The Court may alter or add to any charge either upon its own motion or on an application by the parties concerned. Therefore, such a power can be invoked by the Court suo moto as well. This power under Section 216 CrPC is exclusive to the concerned Court and no party can seek such an addition or alteration of charge as a matter of right by filing an application. It would be the Trial Court which must decide whether a proper charge has been framed or not, at the appropriate stage of the trial. On a consideration of the broad probabilities of the case, the total effect of the evidence and documents adduced, the Trial Court must satisfy itself that the exercise of power under Section 216 is

necessary. The provision has been enacted with the salutary object to ensure a fair and full trial to the accused person(s) in each case.

145. This Court in Anant Prakash Sinha v. State of Haryana and Another reported in (2016) 6 SCC 105 summarised the principles as regards Section 216 CrPC. Herein, charges were framed against the appellant-husband for the commission of offences punishable under Sections 498-A and 323 IPC. During the pendency of the matter, the informant wife had filed an application under Section 216 CrPC for framing an additional charge under Section 406 IPC against both the husband and the mother-in-law on the ground that there was an express complaint with regard to the misappropriation of her entire Stridhan and other articles. Hence, it was contended that the accused persons had committed criminal breach of trust, however, a charge sheet was not filed in respect of the said offence. The application was allowed by the Trial Court and subsequently, the Revisional Court upheld the framing of charge under Section 216 CrPC IPC only against the appellant-husband. This Court while agreeing with the High Court summarised the principles underlying Section 216 CrPC as follows:

i. First, the test for exercise of power under Section 216 CrPC is that it must be founded on the material available on record and therefore, it can be on the basis of the complaint or the FIR, or other accompanying documents or materials brought on record during the course of the trial. The charge which has been framed by the Trial Court must therefore be in accord with the materials available before him.

ii. Secondly, the power must not be construed in a restricted manner to mean that unless evidence has been let in, the charges that have already been framed cannot be altered. The Court is empowered to change or alter the charge framed, if it finds that there is a defect or that something has been left out in the order framing charge.

iii. Thirdly, it is obligatory for the Court to ensure that no prejudice is caused to the accused due to the addition or alteration of charge. The accused must be informed and made aware of the new charge as also the case against him so that he can understand the defence that can be led on his behalf.

The relevant observations are reproduced hereinbelow:

“18. From the aforesaid, it is graphic that the court can change or alter the charge if there is defect or something is left out. The test is, it must be founded on the material available on record. It can be on the basis of the complaint or the FIR or accompanying documents or the material brought on record during the course of trial. It can also be done at any time before pronouncement of judgment. It is not necessary to advert to each and every circumstance. Suffice it to say, if the court has not framed a charge despite the material on record, it has the jurisdiction to add a charge. Similarly, it has the authority to alter the charge. The principle that has to be kept in mind is that the charge so framed by the Magistrate is in accord with the materials produced before him or if subsequent evidence comes on record. It is not to be understood that unless evidence has been let in, charges already framed cannot be altered, for that is not the purport of Section 216 CrPC.

19. In addition to what we have stated hereinabove, another aspect also has to be kept in mind. It is obligatory on the part of the court to see that no prejudice is caused to the accused and he is allowed to have a fair trial. There are in-built safeguards in Section 216 CrPC. It is the duty of the trial court to bear in mind that no prejudice is caused to the accused as that has the potentiality to affect a fair trial. It has been held in Amar Singh v. State of Haryana [Amar Singh v. State of Haryana, (1974) 3 SCC 81 : that the accused must always be made aware of the case against him so as to enable him to understand the defence that he can lead. An accused can be convicted for an offence which is minor than the one he has been charged with, unless the accused satisfies the court that there has been a failure of justice by the non-framing of a charge under a particular penal provision, and some prejudice has been caused to the accused. [...]] (Emphasis supplied)

146. In another decision of this Court in **Nallapareddy Sridhar Reddy v. State of A.P. reported in (2020) 12 SCC 467**, the scope of powers under Section 216 was elaborated. It was stated that the power under this provision to alter a charge is an exclusive and wide-ranging power and this is clear from the fact that it may be exercised at any time before the judgment is pronounced, meaning also at a stage wherein the evidence and arguments are completed and the judgment is reserved. It was further stated that if the Court is of the opinion that there was an omission in the framing of charge or if the existence of the factual ingredients constituting another offence is also inferred from a prima facie examination of the material brought on record, the alteration or addition of a charge can be done. Such material brought on record must have a direct nexus with the ingredients of the alleged offence. This Court cautioned that the power under this provision must be exercised judiciously and observed as follows:

“21. From the above line of precedents, it is clear that Section 216 provides the court an exclusive and wide-ranging power to change or alter any charge. The use of the words “at any time before judgment is pronounced” in sub-section (1) empowers the court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. The alteration or addition of a charge may be done if in the opinion of the court there was an omission in the framing of charge or if upon prima facie examination of the material brought on record, it leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence. The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. Addition of a charge merely commences the trial for the additional charges, whereupon, based on the evidence, it is to be determined whether the accused may be convicted for the additional charges. The court must exercise its powers under Section 216 judiciously and ensure that no prejudice is caused to the accused and that he is allowed to have a fair trial. The only constraint on the court's power is the prejudice likely to be caused to the accused by the addition or alteration of charges. Sub-section (4) accordingly

prescribes the approach to be adopted by the courts where prejudice may be caused.” (Emphasis supplied)”

14. Learned trial court has rightly rejected the application under Section 216 (paper No. 50Ka) after discussion all the material available on record and the statement of PW-1 and PW-2. He rightly came to the conclusion that the incident appears to have taken place outside the house of the first informant while he and his wife came out after hearing the noise of a collision between vehicles, wherein car was damaged. Final observation made by learned trial court in paragraph No. 8 of its order is reproduced hereinbelow:-

"8. Thus, it is very much conspicuous that as per site-map which has been drawn up at the instance of the complainant, incident has taken place outside the home. According to sworn testimony of both the witnesses of fact, the incident of hurling of abusive words has also taken place outside the home while the witnesses were at their doorsteps. Unlike the photographs of damaged car, the prosecution has not submitted photographs of damaged household articles. It has also not been clarified as to which household items were damaged. The country made gun which was allegedly taken out by accused Rajnish Yadav inside the home has also not been recovered during the course of investigation. It is also noteworthy that no independent witness of fact has been examined. Furthermore, there is deep rooted enmity between the parties as is apparent from deposition of complainant which enhances the chances of exaggerations and embellishments. Thus, it clearly appears from the above background that the allegations of breaking into and damaging household articles have been made with a view to enhance the gravity of prosecution. Hence, application 50 Ka is liable to be rejected."

15. In this conspectus, as above, I am of the considered view that in the absence of any credible material collected by the Investigating Officer during the investigation, or any evidence adduced by the prosecution during trial before the court concerned to establish the offence of house trespass after preparation of hurt, assault or wrongly restraint under Section 452 IPC, it would not be befitting to allow the application under Section 216 CrPC to frame new charges against the accused (applicants No. 2 and 3 herein) under Section 452 IPC. Mere averment in the FIR and the deposition made by PW-1 and PW-2 are not, prima facie, sufficient to make out a case of overt act on the part of the present accused to establish the offence of house trespass or summon them for trial of a new charge under Section 452 IPC. Neither has any justifiable ground been made out to pass an order to secure the ends of justice nor

is there an abuse of the process of law warranting interference with the order impugned, in exercise of inherent jurisdiction under Section 528 BNSS. Learned trial court has not committed any illegality, perversity or infirmity in rejecting the application (paper No. 50Ka) filed on behalf of the first informant (applicant herein) under Section 216 CrPC.

16. Resultantly, this Court declines to exercise its inherent jurisdiction under Section 528 BNSS and dismiss the instant application, being misconceived and devoid of merits, with no order as to the costs.

(Hon. Dinesh Pathak,J.)

September 9, 2025

vinay