



2025:AHC:174938

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 32343 of 2025

Manoj Garg And 3 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Rahul Pandey
Counsel for Opposite Party(s)	:	G.A.

Court No. - 72

HON'BLE DEEPAK VERMA, J.

1. Heard learned counsel for the applicants and learned A.G.A. for the State.

2. The present 528 BNSS application has been filed to quash the entire proceedings of Criminal Case No. 40133 of 2025 (State Vs. Manoj Garg & Ors.), under Sections 115 (2) and 351 (2) B.N.S., P.S.-Vijay Nagar, District-Ghaziabad and also to quash the Charge-sheet dated 22.02.2025 filed in Case Crime No. 83 of 2025, under sections 115 (2) and 351 (2) B.N.S., P.S.-Vijay Nagar, District-Ghaziabad; pending in the court of Additional Civil Judge (Senior Division)/ Additional Chief Judicial Magistrate, Court No. 3, Ghaziabad, as well as Cognizance Order Dated 30.04.2025.

3. Learned counsel for the applicants has submitted that charged section is non-cognizable section and the learned Magistrate may pass an order taking cognizance, if he so desires, by proceeding under Chapter XVI of the Bharatiya Nagarik Suraksha Sanhita. Reliance has been placed to Explanation 2(h) of the Bharatiya Nagarik Suraksha Sanhita, which reads as follows:-

"Explanation-- A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint, and the police officer by whom such report is made shall be deemed to be the complainant."

4. Learned A.G.A. has stated that no useful purpose would be served in issuing notice to the opposite party no.2 as it will only delay the proceedings

of the present case.

5. Therefore, on the basis of aforesaid Explanation, which has been interpreted by Co-ordinate Bench of this Court in Application u/s 482 No. 45609 of 2018 (Santosh Kumar and 2 others vs. State of U.P. and others) decided on 31.1.2019, wherein it has been held that when the charge-sheet is only of non-cognizable offence, in view of the aforesaid provision, the charge sheet should be treated as a complaint.

6. The argument of learned counsel for the applicant is well founded and the order taking cognizance is set aside. Now, the Magistrate may pass an order taking cognizance, if he so chooses, by proceeding in this matter as a complaint case under Chapter XVI of the Bharatiya Nagarik Suraksha Sanhita. He can also keep in mind Proviso(a) to Section 223(1) BNSS, which reads as follows:-

"Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses."

(a) If a public servant acting or purporting to act in discharge of his official duties or a Court has made the complaint;"

7. With these observations, this application under Section 528 BNSS is finally ***disposed of***.

(Deepak Verma,J.)

September 26, 2025

Aditya