



2026:AHC:199636

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 42839 of 2025

Umanand Upadhyay

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Shri Kant Shukla
Counsel for Opposite Party(s)	:	G.A., Hridaya Narayan Mishra

Reserved on 11th September, 2026

Delivered on 23rd September, 2026

Court No. - 81

HON'BLE MADAN PAL SINGH, J.

1. Heard Sri S.K. Shukla, learned counsel for the applicant, Sri Abhishek Kumar, learned A.G.A. for the State and perused the record.
2. The present application under Section 528 of the B.N.S.S. has been filed with a prayer to quash charge-sheet dated 16.08.2025 and cognizance order 09.09.2025 as well as entire proceedings of Criminal Case No. 11156 of 2025, arising out of Case Crime No. 182 of 2024, under 352, 351(2), 316(5), 238 and 61(2) B.N.S, Police Station Siddharth Nagar, District Siddharth Nagar, pending in the court of the Chief Judicial Magistrate, Siddharth Nagar.
3. The brief facts of the present case are that the first informant, Vijay Pratap Patel, District Manager, Provincial Cooperative Federation (PCF), lodged an F.I.R. against Umanand Upadhyay, Accountant, and Amit Kumar Chaudhary, District Manager, PCF, alleging that one Manoj Kumar Pandey, who is a Class-IV employee of the PCF, informed him that on 01.10.2024, the said Class-IV employee, namely, Manoj Kumar Pandey, was telephonically informed by Amit Kumar Chaudhary, District Manager, PCF (under suspension), that on 30.09.2024, Umanand Upadhyay, Accountant (under suspension), would come to hand over charge. On the next morning, Umanand

Upadhyay contacted Manoj Kumar Pandey and informed him that he would reach the office by 9:00 a.m. Upon reaching the office, Umanand Upadhyay allegedly took the cheque payment register in his bag. When Manoj Kumar Pandey objected to the same, Umanand Upadhyay allegedly abused and threatened him and took away the said register. It was further alleged that Amit Kumar Chaudhary and Umanand Upadhyay, in collusion with each other, had committed forgery and criminal breach of trust and had caused certain office documents and registers to disappear, thereby causing loss to official work and attempting to destroy the evidence. On the aforesaid allegations, an F.I.R. was lodged against Amit Kumar Chaudhary, District Manager, PCF, and Umanand Upadhyay, Accountant, under Sections 303(2), 352 and 351(2) of the B.N.S. After investigation, the Investigating Officer submitted charge-sheet against both the accused/applicants under Sections 352, 351(2), 316(5), 238 and 61(2) of the B.N.S. Thereafter, on 09.09.2025, the Chief Judicial Magistrate, Siddharth Nagar took cognizance against Amit Kumar Chaudhary, District Manager, PCF, under Sections 316(5) and 61(2) of the B.N.S. and against accused Umanand Upadhyay under Sections 316(5), 352, 351(2), 61(2) and 238 of the B.N.S.

4. Learned counsel for the applicant submits that the present application has been filed for quashing the charge-sheet and the order of cognizance passed by the Chief Judicial Magistrate. Learned counsel for the applicant mainly submits that initially the F.I.R. was lodged under Section 303(2) of the B.N.S. (corresponding to Section 379 IPC), along with other sections, but the charge-sheet has been filed under Section 316(5) of the B.N.S. (corresponding to Section 409 IPC), along with other sections. Learned counsel for the applicant further submits that the offence under Section 409 IPC is not made out against the present applicant, as they are officers/officials of the PCF and under Section 21 IPC, both the officers do not fall within the category of public servants. In support of his contention, he has placed reliance upon the judgment of this Court in **Brijpal Singh Vs. State of U.P. & Anr., passed in Application U/S 482 Cr.P.C. No. 45468 of 2023, decided on 08.04.2024, [2024 (9) ADJ 376]**.
5. It is further submitted that the offences under Sections 351(2) and 352 of the B.N.S. are also not made out, as the specific allegation of abuse

has neither been mentioned in the F.I.R. nor in the statements of the witnesses.

6. Per contra, learned A.G.A. and learned counsel for opposite party no. 2 have opposed the submissions made by learned counsel for the applicants and submitted that the cheque payment register is a valuable security, which was taken away by Umanand, who was the custodian of the said register at the time of the incident, even though he was under suspension, and on the date of the incident the applicants had reached the office to hand over the charge. Learned counsel further submits that both the applicants are officers/officials of the PCF and their salaries were paid by the said Society. Section 316(5) of the B.N.S., being in any manner entrusted with property, or with dominion over property, dishonestly misappropriates or converts that property to his own use, or dishonestly uses or disposes of that property in violation of any direction of law or of any legal contract, constitutes the offence of criminal breach of trust, and the present applicants were also working as agents and, thus, fall within the category of public servants as provided under Section 21 of the IPC (corresponding to Section 2(28) of the B.N.S.). It is next submitted that both the applicants had hatched a conspiracy and deliberately taken away the cheque payment register, which is a valuable security, and with regard to the said incident, Manoj Kumar Pandey, Class-IV employee, was an eye-witness. Hence, a prima facie case is made out against the present applicants.
7. Having considered the rival submissions, perused the record and examined the case law relied upon by learned counsel for the applicants, the moot questions before this Court are, firstly, whether the applicants fall within the category of "public servant" as contemplated under Section 2(28) of the B.N.S., corresponding to Section 21 of the IPC, and secondly, whether a prima facie case is made out against the applicants.
8. Before considering the merits of the case, Section 2(28) of B.N.S. reads as under:

(28) "public servant" means a person falling under any of the descriptions, namely—

- (a) every commissioned officer in the Army, Navy or Air Force;*
- (b) every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;*
- (c) every officer of a court including a liquidator, receiver or Commissioner whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorised by a court to perform any of such duties;*
- (d) every assessor or member of a panchayat assisting a court or public servant;*
- (e) every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court, or by any other competent public authority;*
- (f) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;*
- (g) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;*
- (h) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government;*
- (i) every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;*
- (j) every person who holds any office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or*

to conduct an election or part of an election;

(k) every person—

(i) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(ii) in the service or pay of a local authority as defined in clause (31) of Section 3 of the General Clauses Act, 1897 (10 of 1897), a corporation established by or under a Central or State Act or a Government company as defined in clause (45) of Section 2 of the Companies Act, 2013 (18 of 2013).

Explanation.—(a) persons falling under any of the descriptions made in this clause are public servants, whether appointed by the Government or not;

(b) every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation is a public servant;

(c) "election" means an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under any law for the time being in force.

10. The officers and employees of a cooperative society are not mentioned as public servants under Section 2(28) of the B.N.S.

11. The Section 2(o) of the U.P. Cooperative Societies Act, reads as under:

"Officer of a co-operative society" means the president, vice-president, chairman, vice-chairman, secretary, member of committee of management, treasurer, liquidator, administrator or any other persons employed by a co-operative society whether with or without remuneration to carry on the business of the society or to supervise its affairs;"

11. In Brijpal Singh (supra), paragraph no. 32 of the judgment reads as under:

"32. The employee and officer of the cooperative society are not public servants as per Section 21 of I.P.C. for the

purpose of offences mentioned in I.P.C. Therefore, they cannot be prosecuted under Section 409 I.P.C. but definitely can be prosecuted for the breach of trust under Section 406 I.P.C. However, appropriate Section can be added or removed at the time of framing of charges."

12. From the perusal of Section 2(o) of the U.P. Cooperative Societies Act and Section 2(28) of the B.N.S., as well as the judgment passed by the coordinate Bench of this Court, this Court is of the view that the officers or officials of a cooperative society do not fall within the category of public servants under Section 2(28) of the B.N.S. Consequently, the applicants cannot be prosecuted under Section 316(5) of the B.N.S., corresponding to Section 409 of the IPC.
13. So far as the second question whether a prima facie case is made out against the applicant is concerned, from a perusal of the F.I.R., the statements of Manoj Kumar Pandey and the informant as well as material available on record, a prima facie case is made out against the applicant.
14. Accordingly, the cognizance order dated 09.09.2025 passed by the Chief Judicial Magistrate, Siddharth Nagar, is set aside to the extent it relates to Section 316(5) of the B.N.S. However, the cognizance taken in respect of the remaining offences under BNS will continue against the applicant. Section 303(3) B.N.S. is also added and the cognizance order dated 09.09.2025 is modified to the aforesaid extent. The learned Magistrate shall proceed with the case in accordance with law.
15. Accordingly, the application is disposed of.

September 23, 2026
Akbar

(Madan Pal Singh,J.)