



2026:AHC:43331

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 482 No. - 43270 of 2024

Akash Rajbhar

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Rishu Srivastav

Counsel for Opposite Party(s) : Deepak Yadav, G.A., Manoj Yadav,
Rahul Yadav

Court No. - 82

HON'BLE PADAM NARAIN MISHRA, J.

1. Heard, learned counsel for the applicant and learned counsel for the opposite party no. 2 and learned A.G.A. for the State.
2. The present application has been filed seeking quashing of the cognizance order dated 10.03.2023 as well as the entire proceedings of the Case No. 1538 of 2023 (State Vs. Ramkrit and another) arising out of Case Crime No. 110 of 2022 u/s 406, 419, 420, 504 and 506 I.P.C. Police Station- Sarai Lakhansi, District - Mau.
3. Brief facts of the present case is that an FIR was lodged against the applicant and other persons under section 419, 420, 406, 504 and 506 IPC and the investigating officer after completing investigation submitted the charge sheet against the applicant under sections 504 and 506 of IPC. The magistrate vide order dated 10.03.2023 took cognizance against the applicant under sections 419, 420, 406, 504 and 506 IPC.
4. Learned counsel for the applicant has submitted that the magistrate has taken cognizance against the applicant under sections 419, 420, 406, 504 and 506 IPC, while the charge-sheet was only submitted under sections 504 and 506. He further submitted that the learned CJM, Mau without using his judicial mind has taken cognizance against the applicant in sections not listed in the charge sheet. He further submitted that the impugned order dated

10.03.2023 is not a reasonable and speaking order. He placed reliance on the Judgment passed by the co ordinate bench of this court in **Criminal Appeal No. 10230 of 2023 (Smt. Usha vs State of U.P. and Another)**.

5. Per contra, Learned counsel for the opposite party and learned AGA opposed the submissions advanced by the learned counsel for the applicant. They placed reliance on the judgment passed by the co ordinate bench of this court in **Application u/s 528 BNSS No. 44720 of 2024 (Nisha Kushwaha vs State of U.P. and Another)**.

6. The core issue for the consideration before this court is that whether the magistrate at the time of taking cognizance can summons the accused for the offences not mentioned in the charge sheet.

7. In the case of **Minu Kumari and another Vs. State of Bihar and others (2006) 4 SCC 356**, the Apex Court observed as under:-

"11. The position is, therefore, now well-settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the Investigating Officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the Investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused."

8. In the case of **Dharam Pal v. State of Haryana, (2014) 3 SCC 306**

: (2014) 2 SCC (Cri) 159 : 2013 SCC OnLine SC 648, the Apex Court observed as under:-

"34. The view expressed in Kishun Singh case [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470] , in our view, is more acceptable since, as has been held by this Court in the cases referred to hereinbefore, the Magistrate has ample powers to disagree with the final report that may be filed by the police authorities under Section 173(2) of the Code and to proceed against the accused persons dehors the police report, which power the Sessions Court does not have till the Section 319 stage is reached. The upshot of the said situation would be that even though the Magistrate had powers to disagree with the police report filed under Section 173(2) of the Code, he was helpless in taking recourse to such a course of action while the Sessions Judge was also unable to proceed against any person, other than the accused sent up for trial, till such time evidence had been adduced and the witnesses had been cross-examined on behalf of the accused."

"35. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(3) Cr.P.C. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column no.2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter."

9. It is the well settled principle of the law that the magistrate is not bound by the police report. When the charge sheet is submitted, the magistrate has two options either to accept the police report or to

reject the police report. When the magistrate does not agree with the police report, he is empowered to take cognizance independently by applying his judicial mind on the material available on record. Let's assume a situation in which the magistrate does not have any power to disagree with the police report or he is bound by the police report. So, in this situation, if the police submits a final report, the magistrate has no other option but to agree with the report of the police. But, in fact, the situation is not the same as stated above. In reality, magistrate has power to disagree with the police report and where police submits a final report, he is free to summons the accused on the basis of the material available on record by applying his judicial mind(if prima facie discloses the commission of offence). Now, In the light of aforesaid discussion, it is evident that when a magistrate is empowered to disagree with the final report and to take cognizance by exercising its judicial mind when the final report is submitted, it cannot be said that magistrate is not empowered to take cognizance for the offences not mentioned in the charge sheet when the material available on record discloses the commission of offence.

10. Coming back to the facts of the case in hand, from the perusal of the impugned order, it is clear that while passing the same, learned Magistrate has not recorded his satisfaction regarding taking cognizance additionally for the offences not mentioned in the Charge sheet. The magistrate simply stated that on perusal of Charge sheet, Case Diary and other prosecution documents there are sufficient ground to take cognizance. The impugned order suffers from vice of non application of mind and also a non speaking order which does not reflect the subjective satisfaction recorded by the magistrate. Hence, it is liable to be set aside.

11. Cognizance order dated 10.03.2023 passed in the Case No. 1538 of 2023 (State Vs. Ramkrit and another) arising out of Case Crime No. 110 of 2022 is set aside.

12. Accordingly, the present application is **allowed**.

13. The matter is remanded back to the concerned court for passing a fresh reasoned order reflecting application of judicial mind.

February 19, 2026

Israr

(Padam Narain Mishra,J.)