2026:AHC:228135

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 6940 of 2026

Guddu And 22 Others

.....Applicant(s)

Versus

State Of U.P. And 2 Others

.....Opposite Party(s)

Counsel for Applicant(s)	:	Shakti Dubey, Vinay Kumar Tripathi
Counsel for Opposite Party(s)	:	G.A.

Court No. - 73

HON'BLE DR. GAUTAM CHOWDHARY, J.

1. Despite service of notice upon the opposite party No. 2, none has appeared on his behalf.

2. Heard learned counsel for the applicants, learned A.G.A. for the State and perused the material brought on record.

3. This application under Section 528 BNSS has been filed with the prayer for quashing of charge sheet dated 08.06.2018 as well as entire proceeding of Case No. 4647 of 2025 (State Vs. Manvendra Singh), arising out of Case Crime No. 156 of 2018, under Section 2/3 of Prevention of Damage to Public Property Act, 1984 and Sections 441, 447 I.P.C., Police Station Khutar, District Shahjahanpur, pending in the court of learned Civil Judge, Junior Division, Powayan, District Shahjahanpur. Further prayer has been made for quashing of cognizance order dated 23.06.2025 passed in the aforementioned case.

4. Learned counsel for the applicants submits that other co-accused, Jasvir Singh and 15 others have also approached this Court by filing Application u/s 528 BNSS No. 34871 of 2025, challenging therein the entire proceeding initiated against them arising out of same crime, which application has been allowed by a coordinate Bench of this Court vide order dated 11.09.2026 while quashing the entire proceeding initiated against the said co-accused persons. Copy of which order is annexed as Annexure-5 to the affidavit filed in support of the present application. Thus, learned counsel submits that the present proceeding initiated against the applicants, who are before this Court, may also be quashed in view of the order dated 11.09.2026 passed in the said application.

5. The order dated 11.09.2026 passed in Application u/s 528 BNSS No. 34871 of 2025 (Jasvir Singh and 15 others Vs. State of U.P. and 2 others), reads as under:

> *"1. Heard learned counsel for applicants and learned A.G.A for the State-respondent.*

2. The instant application has been preferred to quash the chargesheet dated 08.06.2018 along with cognizance/summoning orders dated 23.06.2025 and 15.07.2025 as well as entire proceeding of Criminal Case No.4647 of 2025 (State Vs. Manvendra Singh), arising out of Case Crime No.156 of 2018, under section 441, 447 IPC and Section 2/3 of Prevention of Damage to Public Property Act, 1984, P.S. Khutar, District- Shajahanpur, pending in the court of learned Civil Judge (J.D.) Puwaya, Shahjahanpur.

3. Brief facts of the present case are that a first information report dated 05.04.2018 bearing Case Crime No.156 of 2018 was lodged by opposite party no.2/Tehsildar concerned in pursuance to Section 441, 447 IPC and Section 2/3 of Prevention of Damage to Public Property Act, 1984 against 48 persons including applicants alleging that gata numbers mentioned in the FIR, which are recorded as public property, on which the applicants have made encroachment by way of raising illegal construction. The applicants had, thus, caused damage and loss to the public property which is the land vested in Gram Sabha. After lodging of the FIR, the concerned Investigating Officer started inquiry and after conclusion of the same, preferred charge-sheet on dated 08.06.2018 against applicants whereupon learned court concerned has taken cognizance of offence and summoned applicants vide orders dated 23.06.2025 and 15.07.2025, which impugned the present application.

4. Learned counsel for applicants has challenged the entire proceedings of the present on several other grounds inter-alia precisely on the ground that lodging of the first information report taking aid of provisions of the P.D.P.P. Act, 1984, is nothing but an abuse of process of the law, inasmuch as, the said provisions cannot be invoked to lodge a criminal case on the allegations of damage or loss caused to the Gram Sabha land. The Magistrate has acted illegally and without application of judicial mind in taking cognizance on the charge sheet submitted under Section 441, 447 IPC and Section 2/3 of the P.D.P.P. Act, 1984. As far as the allegations of commission of offence of criminal trespass under Section 447 IPC is concerned, learned counsel for applicants submitted that the same cannot be attracted unless it is proved by the prosecution that they did so with an intention to intimidate, insult or annoy the person in possession or to commit an offence. Learned counsel for applicants has also submitted that applicants are residing over the disputed properties about 100 years ago.

5. In any case, the question as to whether applicants had illegally encroached upon the land vested in Gram Sabha, recorded as public property, can only be adjudicated by the Revenue Authorities. The proper proceeding for eviction of the unauthorized occupant can be undertaken under Section 67 of the Revenue Code, 2006. The short-cut procedure adopted by opposite party no.2, is nothing but with a view to harass the applicants.

6. Per contra, learned AGA vehemently opposed the prayer sought through the instant application, but could not dispute the aforesaid arguments raised by learned counsel for applicants.

7. While dealing with similar issue, co-ordinate Bench of this Court vide order 6.8.2020 passed in Application u/s 482 no. 9964 of 2020 (Munshi Lal and Another vs. State of U.P. and another), quashed the entire

proceeding under Section 447 IPC and Section 2/3 of Prevention of Damage to Public Property Act, 1984 and held that as far as criminal proceeding for illegal encroachment, damage or trespass over the land belonging to Gram Sabha is concerned, the same can be undertaken but it would be subject to the adjudication of rights of the parties over the land in dispute as the said determination can be done only by the revenue court. As far as the P.D.P.P. Act, 1984 is concerned, the same has been enacted with the specific purpose. The statement of objects and reasons of the said Act shows that it was enacted with a view to curb acts of vandalism and damage to public property including destruction and damage caused during riots and public commotion.

8. As far as the allegation of criminal offence under Section 447 IPC to constitute criminal trespass, the prosecution has to prove and the Court has to return a finding on the evidence that the trespass was committed with one of the intents enumerated in Section 441 of the Indian Penal Code. The prosecution has, thus, not only to allege but also to prove that the entry or unlawful occupation must be with an intent; (i) to commit an offence; or (ii) to intimidate, insult or annoy any person in possession of the property". Every 'trespass' by itself is not criminal. In absence of any such finding, the conviction under Section 447 IPC cannot be sustained. The offence under Section 447 I.P.C. though is cognizable but is also a compoundable offence triable by any Magistrate, trial of which has to be conducted summarily. A charge under this section should specifically state intent which is alleged. The accused may lay a bonafide claim and right in the land in question. Although he may have no right to the land but he cannot be convicted of criminal trespass unless it is proved by the prosecution that he did so with an intention to intimidate, insult or annoy the person in possession or to commit an offence.

9. From perusal of the records, it transpires that present case is squarely covered with the judgment of co-ordinate Bench of this Court passed in Munshi Lal (supra) and as such, the criminal proceedings initiated against the applicants pursuant to Section 441, 447 IPC and Section 2/3 of Prevention of Damage to Public Property Act, 1984, cannot but be said to be an abuse of the process of law or the Court. The cognizance and summoning orders dated 23.06.2025 and 15.07.2025 have been passed in complete ignorance of law. The continuation of criminal proceedings, in the considered opinion of the Court, being an abuse of process of the Court, ends of the justice requires that the said proceedings be quashed.

10. Invoking inherent powers under Section 528 BNSS, chargesheet dated 08.06.2018 along with cognizance/summoning orders dated 23.06.2025 and 15.07.2025 as well as entire proceeding of Criminal Case No.4647 of 2025 (State Vs. Manvendra Singh), arising out of Case Crime No.156 of 2018, under section 441, 447 IPC and Section 2/3 of Prevention of Damage to Public Property Act, 1984, P.S. Khutar, District-Shajahanpur, pending in the court of learned Civil Judge (J.D.) Puwaya, Shahjahanpur, are hereby quashed qua applicants herein.

11. The instant application stands allowed accordingly.

12. However, it is made clear that this order shall not preclude the revenue authorities to proceed against applicants herein, if required, in accordance with the strict provisions of U.P. Revenue Code, 2006."

6. Learned A.G.A. for the State does not dispute the above submissions made on behalf of applicants. He also admitted that the present proceeding may also be quashed.

7. Once that be so, this Court does not find any occasion for the impugned proceeding to be pursued any further. Consequently, the entire proceeding of Case No. 4647 of 2025 (State Vs. Manvendra Singh), arising out of Case Crime No. 156 of 2018, under Section 2/3 of Prevention of Damage to Public Property Act, 1984 and Sections 441, 447 I.P.C., Police Station Khutar, District Shahjahanpur, pending in the court of learned Civil Judge, Junior Division, Powayan, District Shahjahanpur, so far as it relates to the present applicants, is hereby **quashed** and the present application filed under Section 528 BNSS is, accordingly, **allowed**.

(Dr. Gautam Chowdhary,J.)

November 2, 2026
Mustaqeem.

Digitally signed by :-
MOHD MUSTAQEEM KHAN
High Court of Judicature at Allahabad