2026:AHC:211127

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 7944 of 2026

Mohd Mustaq

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Rayoof Ali
Counsel for Opposite Party(s)	:	G.A.

Court No. - 79

HON'BLE MADAN PAL SINGH, J.

1. Sri Afzal Husain, learned Advocate, has filed his vakalatnama on behalf of opposite party no. 2, which is taken on record.

2. Heard learned counsel for the parties and perused the material available on record.

3. The instant application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (B.N.S.S.) has been preferred with a prayer to quash the charge-sheet dated 8th January, 2025, cognizance/summoning order dated 4th July, 2025, as well as the entire proceedings of Criminal Case No. 221 of 2025 (State Vs. Mustaq Ahmad), arising out of Case Crime No. 312 of 2024, under Sections 115(2), 352 and 351(3) B.N.S., Police Station-Rudhauli, District-Basti, pending in the Court of Additional Chief Judicial Magistrate-I, Court No. 9, Basti.

4. Learned counsel for the applicants submitted that on the basis of the First Information Report lodged by opposite party no. 2 at Police Station-Rudhauli, District-Basti, Case Crime No. 312 of 2024 was registered under Sections 115(2), 352 and 351(3) B.N.S. However, after completion of the investigation, the Investigating Officer submitted a charge-sheet under Sections 115(2), 352 and 351(3) B.N.S. On the basis thereof, Case No. 221 of 2025 (State Vs. Mustaq Ahmad), under Sections 115(2), 352 and 351(3) B.N.S., was registered against the applicants and the learned Magistrate took cognizance of the aforesaid offences.

5. Learned counsel for the applicants submitted that the offences under Sections 115(2), 352 and 351(3) B.N.S. are non-cognizable. Hence, in view of the Explanation to Section 2(1)(h) of the B.N.S.S. [old Section 2(d) of the Code of Criminal Procedure], the case could not have proceeded as a State case and was liable to be treated as a complaint case. He further submitted that the learned Magistrate has erroneously treated the charge-sheet as a State case and taken cognizance thereon. In support of his submissions, he has relied upon the judgment of the Division Bench of this Court in Criminal Misc. Writ Petition No. 1932 of 2025 (Gatish and 3 Others Vs. State of U.P. and Others).

6. It is not disputed that the offences under Sections 115(2) and 351(2) B.N.S. are non-cognizable.

7. The Explanation to Section 2(1) of the B.N.S.S. [old Section 2(d) of the Code of Criminal Procedure] reads as under:

> *"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."*

8. In view of the aforesaid Explanation, a report submitted by a police officer after investigation, disclosing the commission of a non-cognizable offence, is to be deemed to be a complaint and the police officer submitting such report is to be deemed to be the complainant. In other words, a charge-sheet submitted by the police in respect of a non-cognizable offence is to be treated as a complaint, and the procedure prescribed for hearing a complaint case shall be applicable thereto.

9. In the present case, from the material brought on record, it transpires that the charge-sheet submitted by the Investigating Officer, instead of being treated as a complaint, has been treated by the concerned Magistrate as a State case, which is not permissible in law.

10. Learned counsel for opposite party no. 2 and learned A.G.A. vehemently opposed the submissions made by learned counsel for the applicants.

11. Having considered the submissions made by learned counsel for the parties, perused the material available on record and examined the relevant provisions of law, this Court is of the view that the submissions advanced by learned counsel for the applicants have force and are liable to be accepted.

12. For the aforesaid reasons, the present application is **allowed in part**. The impugned order, whereby the present criminal case has been treated as a State case, is hereby set aside.

13. It is made clear that the case shall be treated as a complaint case and the procedure prescribed for hearing a complaint case shall be followed by the court concerned. The court concerned shall proceed in accordance with law and consider the question of summoning the accused after following the procedure prescribed under law.

October 8, 2026
Akbar

(Madan Pal Singh,J.)

Digitally signed by :-
MOHAMMAD AKBAR
High Court of Judicature at Allahabad