2026:AHC:208535

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 30619 of 2025

Kailash And 3 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Ajay Kumar Pandey, Jaideep Tripathi
Counsel for Opposite Party(s)	:	G.A., Kamala Kant, Vidya Dhar Yadav

Court No. - 79

HON'BLE MADAN PAL SINGH, J.

1. Heard learned counsel for the applicants, learned counsel for the opposite party no.2 and the learned A.G.A. for the State.

2. This application under Section 528 B.N.S.S. (old 482 Cr. P. C.) has been filed by applicants with a prayer to quash the charge-sheet dated 14th March, 2025, cognizance/summoning order dated 19th April, 2025 as well as the entire proceeding of the Criminal Case No. 221 of 2025 (State Vs. Kailash & Others) arising out of Case Crime No. 42 of 2025, under Sections 115 (2), 352 and 351 (2) B.N.S., Police Station-Mau, District-Chitrakoot, pending in the Court of Judicial Magistrate, Mau, Chitrakoot.

3. Learned counsel for the applicants submitted that on the basis of the first information report lodged by the opposite party no. 2 at Police Station-Mau, District-Chitrakoot registered as Case Crime No. 42 of 2025, under Sections 115 (2), 352 and 351 (2) B.N.S. After completion of investigation charge sheet was submitted by the Investigation Officer under the aforesaid Sections on the basis of which Criminal Case No. 221 of 2025 (State Vs. Kailash & Others) was registered against the applicants and the learned Magistrate took cognizance of the aforementioned offences against the applicants vide order dated 19th April, 2025.

4. Learned counsel for the applicants submitted that the offence under Sections 115 (2), 352 and 351 (2) B.N.S. are non-cognizable, hence in view of the Explanation to Section 2 (1) (h) of B.N.S.S. , the case could not proceed as State Case and it has to proceed as a complaint case. He further submitted that the learned Magistrate has erroneously registered the charge-sheet as a State case and taken cognizance. In support of his submissions, learned counsel for the applicants has relied upon the Division Bench judgment of this Court dated **4th February, 2025 passed in Criminal Misc. Writ Petition No.**

1932 of 2025 (Gatish & 3 Others VS. State of U.P. & Others), whereby the Division Bench has held that the offence under Sections 115 (2), 352 and 351 (2) B.N.S. is non-cognizable, as such, first information report could not have been lodged. The proper course is that of filing complaint as per Section 2 (1) (h) of B.N.S.S.

5. It is not disputed that the offence under Sections 115 (2), 352 and 351 (2) B.N.S. is non-cognizable.

6. Explanation to Section 2 (1) (h) of B.N.S.S. runs 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."

7. In view of the said Explanation, report of the police officer after investigation disclosing commission of non-cognizable offence is to be deemed to be a complaint and the police officer who submitted the report has to be deemed to be a complainant. In other words the charge-sheet submitted by the police in a non-cognizable offence shall be treated to be a complaint and the procedure prescribed for hearing of complaint case shall be applicable to that case.

8. 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 as a State Case by the concerned Magistrate, which is not permissible under law.

9. Learned A. G. A. vehemently opposed the submissions made by learned counsel for the applicants.

10. After having considered the submissions made by learned counsel for the parties and perused the material on record and examined the relevant provisions of the Code of Criminal Procedure, I am of the view that the submissions made by learned counsel for the applicants have force and are liable to be accepted.

11. For the aforesaid reasons, the present application is **allowed in part.**

12. The order impugned treating the present criminal case as a State Case is, accordingly, set aside.

13. It is made clear that the case shall be treated to be a complaint case and the procedure prescribed for hearing of the complainant and parties concerned shall be followed by the court concerned before summoning the

accused.

October 6, 2026
Sushil/-

(Madan Pal Singh,J.)

Digitally signed by :-
SUSHIL KUMAR SINGH
High Court of Judicature at Allahabad