2026:AHC:208948

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 42878 of 2026

Om Narayan And 3 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s) : Dharmendra Singh, Yashi Yadav
Counsel for Opposite Party(s) : G.A.

Court No. - 72

HON'BLE DEEPAK VERMA, J.

1. Heard learned counsel for the applicants; learned A.G.A. for the State and perused the record.

2. This application under Section 528 B.N.S.S. has been filed by the applicants to quash the summoning order dated 12.12.2025 as well as entire proceedings of Complaint Case No. 400 of 2024 under sections 147,148,149,452,323,504,506 IPC (Smt. Chandrkanti Vs. Om Narayan and others) pending to the court of Additional Chief Judicial Magistrate Court No. 4 Etawah District Etawah.

3. Learned counsel for the applicants submits that opposite party no. 2/complainant lodged F.I.R. as Case Crime No.225 of 2017, under sections 147, 323, 307, 352, 452, 506 I.P.C. Thereafter the I.O. submitted final report against the applicants then the informant/opposite party no. 2 filed protest application against the final report and protest application of informant/opposite party no. 2, was treated as complaint. Thereafter, the applicants have been summoned. Counsel for the applicants next submits that summoning by learned Magistrate by order dated 12.12.2025 is in contravention of Proviso to clause 1 of Section 223 B.N.S.S. which provides that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard. Learned Magistrate before taking cognizance and issuance of process has not given opportunity to the applicants of being heard.

4. Learned AGA has not disputed the facts argued by learned counsel for the

applicants.

5. Argument raised by the learned counsel for the applicant has legal force and the fact prima-facie discloses that the applicants have not been given opportunity before taking cognizance and issuance of process. The order dated 12.12.2025, by which the applicants have been summoned by the learned Magistrate is, hereby, set aside.

6. The present application is **disposed of** with the direction that the concerned Magistrate shall pass a fresh order in accordance with law under Proviso 1 of Section 223 B.N.S.S. within a period of six weeks from the date of production of certified copy of this order.

(Deepak Verma,J.)

October 6, 2026
Meenu Singh

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