2026:AHC:211237

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 37162 of 2026

Vicky @ Afzal And Another

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Mohd. Hasham
Counsel for Opposite Party(s)	:	G.A.

Court No. - 76

HON'BLE SAURABH SRIVASTAVA, J.

1. Heard learned counsel for applicants and learned AGA for State.

2. Present application has been preferred with prayer to quash charge sheet dated 29.5.2019 and entire proceeding of Case no. 18538 of 2019 arising out of Case Crime no. 232 of 2015 under sections 379, 411 IPC, PS- Sector-20, District Gautam Budh Nagar.

3. It is contended by learned counsel for applicants that applicants have been falsely implicated in the present case due to *mala fide* intention and ulterior motive of opposite party no. 2. From perusal of documentary evidences, no offence punishable in pursuance of aforesaid sections is made out against the applicants and as such impugned charge sheet and entire proceeding are liable to be quashed and set aside.

4. Per contra, learned counsel for opposite parties vehemently opposed the prayer sought through the instant application and rebutted the stands taken up by learned counsel for applicants by way of submitting that the contentions, which are sought to be raised on behalf of applicants, would relate to disputed questions of fact, and would involve appreciation of evidence. It is also submitted that at the time of taking cognizance, only a prima facie case is to be seen and the court concerned is not expected to hold a mini trial.

5. After hearing the rival submissions extended by learned counsels for the parties and perusing the records, this Court is of the opinion that at the stage

of summoning, the Magistrate is only required to record a *prima facie* opinion, based on the material on record, and is not expected to hold a mini trial or to examine the defence of the accused. In judgment rendered by Hon'ble Apex Court in case of **S.W. Palanitkar and Others v. State of Bihar and Another; (2002) 1 SCC 241** it was held that the test which was required to be applied was whether there is "sufficient ground for proceeding" and not whether there is "sufficient ground for conviction". In the case of **Nupur Talwar v. Central Bureau of Investigation and Another; (2012) 11 SCC 465**, it was reiterated that the limited purpose of consideration of material at the stage of issuing process being tentative as distinguished from the actual evidence produced during trial, the test to be applied at the stage was whether the material placed before the Magistrate was "sufficient for proceeding against the accused" and not "sufficient to prove and establish the guilt".

6. Recently, in judgment rendered by Hon’ble Supreme Court in case of **Muskan Vs. Ishaan Khan (Sataniya) and others** passed in Criminal Appeal no. 4752 of 2025 (arising out of S.L.P. (Criminal) No. 1531 of 2025, it has been held that on the aspect of the powers of the Courts under Section 482 of the Cr.PC, it is settled that at the stage of quashing, the Court is not required to conduct a mini trial. Thus, the jurisdiction under Section 482 of the Cr.PC with respect to quashing is somewhat limited as the Court has to only consider whether any sufficient material is available to proceed against the accused or not. If sufficient material is available, the power under Section 482 should not be exercised.

7. From perusal of the material on record, at this stage, it cannot be said that no offence is made out against the applicants. The assertions of false implication raised by the applicants are factual issues that requires proper adjudication by the trial court based on evidence and cannot be conclusively determined in proceedings under Section 528 BNSS. In proceeding u/s 528 BNSS, this Court is not inclined to hold mini-trial.

8. It is well settled that the inherent powers under Section 528 BNSS are to be exercised sparingly and with caution, primarily to prevent abuse of the process of the court or to secure the ends of justice. In the instant case, no sufficient ground have been made out to invoke the extraordinary jurisdiction of this Court under Section 528 BNSS.

9. In view of the foregoing, the application under Section 528 BNSS is

devoid of merits and is accordingly **dismissed**.

(Saurabh Srivastava,J.)

October 7, 2026
Shaswat

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