2026:AHC:211128

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 37348 of 2026

Ashu Alias Ashutosh Dwivedi

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Ajatshatru Singh
Counsel for Opposite Party(s)	:	G.A.

Court No. - 76

HON'BLE SAURABH SRIVASTAVA, J.

1. Heard learned counsel for applicant and learned AGA for the State.

2. Present application has been filed with the prayer to quash chargesheet dated 29.11.2022 and cognizance/summoning order dated 15.04.2023 along with entire proceedings of Case No.3701 of 2023 (State Vs. Ashu @ Ashutosh Dwivedi), arising out of Case Crime no. 214 of 2022, under Section 174-A IPC, P.S.- Sumerpur, District Hamirpur, pending in the court of learned Chief Judicial Magistrate, Hamirpur.

3. Learned counsel for applicant submitted that the proceedings under Section 174-A IPC pending against applicant before learned court concerned, is based upon an FIR, therefore the same is unsustainable in the eyes of law particularly in view of provisions as envisaged under Section 195 IPC. In support of his submission, learned counsel for applicant relied upon a judgment rendered by Division Bench of this Court in **Criminal Misc. Writ Petition No. 17560 of 2023 (Sumit And Another vs. State of U.P. And 2 Others)** wherein, it has been held that proceedings under Section 174-A IPC can be initiated only on the basis of written complaint of the Court and not on the basis of Police report. Relevant paragraph of the said judgment are being extracted hereinunder:-

> *"22. It is clearly established that Section 174-A I.P.C. was inserted by way of amendment in 2005 between Sections 172 to 188, therefore, it is clear that Section 174-A I.P.C. is part of the offences mentioned in Section 195(1)(a)(i) Cr.P.C. for which court is barred from taking cognizance except upon a complaint by the court.*

23. It is also relevant to mention here that cognizable offence itself permits the police to arrest a person without warrant, therefore, registration of F.I.R. of cognizable offence itself will affect the personal liberty of a person protected by Article 21 of the Constitution of India. Therefore, if legislature had intended to invoke the provision of cognizable offence only on the basis of filing written complaint then permitting to register F.I.R. for direct offence will definitely amount to interfere/deprive the personal liberty of a person. Therefore, once Section 195(1)(a)(i) Cr.P.C prohibits the taking cognizance of the offence u/s 174-A I.P.C., except on the basis of written complaint, then permitting lodging of an F.I.R. u/s 174-A I.P.C. will amount to travesty of justice to the person concerned as the personal liberty under Article 21 of the Constitution cannot be deprived, except in accordance with law.

Conclusion

24. Therefore, if the court itself cannot take cognizance of the offence u/s 174-A I.P.C. on the basis of police report, then lodging the F.I.R. u/s 174-A I.P.C. is futile, and will be against the provision of Section 195(1)(a)(i) Cr.P.C. Therefore, proceedings u/s 174-A I.P.C. can be initiated only on the basis of written complaint of the court which had initiated proceedings u/s 82 Cr.P.c. against the accused and F.I.R. is barred by Section 195(1)(a)(i) Cr.P.C.

25. This Court also holds that judgement of Single Benches of Allahabad High Court in Moti Singh Sikarwar (supra) as well as of Delhi High Court in Maneesh Goomer (supra) have not laid down correct law regarding interpretation of Section 174-A I.P.C. read with Section 195(1)(a)(i) Cr.P.C."

4. On the other hand, learned A.G.A. has vehemently opposed the prayer sought through the instant application but unable to dispute the settled proposition of law as relied upon by the learned counsel appearing for applicant.

5. Since the arguments as advanced on behalf of learned counsel for applicant, are based on legal issue, no notice is required to be issued to opposite party no.2.

6. Considering the settled proposition of law as also the facts of the case that on the basis of FIR No. 214 of 2022, the proceedings under Section 174-A IPC were initiated against the applicant and are pending as Case No.3701 of 2023 (State Vs. Ashu @ Ashutosh Dwivedi) in the court of learned Chief Judicial Magistrate, Hamirpur, wherein the impugned summoning order dated 15.04.2023 has been passed, this Court finds that interference is required in the matter.

7. In view thereof, chargesheet dated 29.11.2022 and cognizance/summoning order dated 15.04.2023 along with entire proceedings of Case No.3701 of 2023 (State Vs. Ashu @ Ashutosh Dwivedi), arising out of Case Crime no. 214 of 2022, under Section 174-A IPC, P.S.- Sumerpur, District Hamirpur, pending in the court of learned Chief Judicial Magistrate, Hamirpur, are hereby quashed.

8. Accordingly, the instant application is **allowed.**

(Saurabh Srivastava,J.)

October 7, 2026
Vivek Kr.

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