2026:AHC:211176

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 37306 of 2026

Ashish Pandey

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Birendra Singh, Deepak Tiwari, Yash Pratap Singh
Counsel for Opposite Party(s)	:	G.A.

Court No. - 76

HON'BLE SAURABH SRIVASTAVA, J.

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

2. The present application has been preferred for seeking quashing of chargesheet dated 09.09.2024 and cognizance order dated 06.08.2025 along with entire proceedings of Case No.48851 of 2025 (State Vs. Ashish Pandey and others), arising out of Case Crime No.610 of 2024, under Section 115(2), 351(3), 352 of BNS, P.S. Gulriha, District Gorakhpur, pending before learned court concerned.

3. Learned counsel for applicant has made only one submission before the Court that offences under Section 115(2), 351(3), 352 of BNS are non-cognizable and in view of the explanation to Section 2(1)(h) of BNSS, the charge sheet filed by the Investigating Officer concerned cannot proceed as a police case and the same is liable to be proceeded with as a complaint case. In support of his submission, learned counsel of applicant has placed reliance upon the judgment passed in the case of **Shakila Bano and others Vs. State of U.P. and another, 2008 (61) ACC 636**.

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

5. Although, learned AGA opposed the prayer sought through the instant application but did not dispute the submissions so made by learned counsel for applicant.

6. Before proceeding further, the relevant provisions of Section 2(1)(h) of

BNSS are being reproduced for ready reference as under:-

> *"2. Definitions.-(1) In this Sanhita, unless the context otherwise requires,-*
>
> *(h) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Sanhita, that some person, whether known or unknown, has committed an offence, but does not include a police report.*
>
> *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 above explanation, charge sheet submitted by the concerned Investigating Officer in the present case under Section 115(2), 351(3), 352 of BNS, should have been treated as complaint and it is to be decided as complaint but the learned Magistrate fell in legal error by taking cognizance as State case and the orders passed by him is, therefore, liable to be set aside.

8. In view thereof, order dated 06.08.2025 passed in Case No.48851 of 2025 (State Vs. Ashish Pandey and others), arising out of Case Crime No.610 of 2024, summoning the applicant on the basis of chargesheet submitted by concerned Investigating Officer under Section 115(2), 351(3), 352 of BNS treating the same as State case, is set aside.

9. Accordingly, the instant application is **partly allowed**.

10. However, it is made clear that this order shall not preclude the learned court concerned to proceed with the case treating it as complaint case, if required, in accordance with law.

(Saurabh Srivastava,J.)

October 7, 2026
Vivek Kr.

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