2026:AHC:211137

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 40511 of 2026

Durgesh Nandini And 2 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

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

Court No. - 76

HON'BLE SAURABH SRIVASTAVA, J.

1. Heard Mr. Saket Singh, Advocate holding brief of Sri Sanjeev Kumar Singh, learned counsel for applicants and learned AGA for the State.

2. The present application has been filed by applicants praying for quashing of charge-sheet dated 16.05.2017, cognizance/summoning order dated 20.06.2017 as well as non-bailable warrant dated 20.02.2026 and the entire proceedings of Case No.7529 of 2017 (State Vs. Durgesh Nandini and Others) arising out of Case Crime No.144 of 2017, under Sections 448, 506 IPC, P.S. Gorakhnath, District- Gorakhpur, pending in the court of learned Additional Chief Judicial Magistrate 1st, Gorakhpur.

3. The only argument raised by learned counsel for applicants is that implication of the applicants under Section 448 IPC in charge-sheet is unwarranted since for implication under Section 448 IPC, prior notice is mandatory as per U.P. Amendment Act, 1961. He further submits that since there is minor difference between sections 447 and 448 IPC, i.e., 447 IPC relates to Criminal Trespass and 448 relates to House Trespass and as such prior notice under amended section 441 IPC is mandatory for implication in both the sections. In support of his submission, learned counsel for applicants place reliance upon a judgement of this Court passed in the case of **Rahtu Lal @ Rahtu Ram @ Divyanand & Others Vs. State of U.P. & Another passed in Application U/s 482/378/407 No. 1421 of 2004**, relevant paragraph of the said judgment is being quoted hereinbelow:-

> *"5.7 In the above facts and circumstances, applicants cannot be termed as trespassers nor they can be tried under the provisions of Section 447*

I.P.C., because no offence under that section is made out against the applicants. Since notice under amended Section 441 I.P.C. is mandatory requirement but the same has not been completed, because no notice under Section 441 I.P.C. is ever sent to applicants. Due to non compliance of this mandatory provision, offence of "criminal trespass" which has been defined in Section 441 I.P.C. has not been made out, therefore, charge sheet filed against applicants under Section 447 I.P.C. is legally not sustainable."

4. Per contra, learned A.G.A. vehemently opposed the submission made on behalf of applicants by way of submitting that effect of non sending of notice under amended Section 441 I.P.C. has to be looked by learned court concerned and applicants may move an application of discharge before learned court concerned.

5. Since legal question has been raised by learned counsel for applicants and as such process for issuing notice to opposite party no.2, is hereby dispensed with.

6. For proper appreciation of the rival arguments raised on behalf of parties, **amended Section 441 and 447 I.P.C.** are of vital importance and the same are reproduced hereinbelow :-

*"**441. Criminal trespass.-** Whoever enters into or upon property in possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, or, having entered into or upon such property, whether before or after the coming into force of the Criminal Law (U.P. Amendment) Act, 1961, with the intention of taking unauthorised possession or making unauthorised use of such property fails to withdraw from such property, or its possession or use when called upon to do so by that another person by notice in writing, duly served upon him, by the date specified in the notice, is said to commit "criminal trespass"*

*"**447. Punishment for criminal trespass.** Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.*

***448. Punishment for house-trespass.** Whoever commits house-trespass*

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."

7. It is quite clear from perusal of above amended Section 441 I.P.C. that any person entered into possession of any property of another person before or after coming into force of the criminal law (U.P. Amendment Act, 1961), with the intention to take unauthorised possession or making unauthorised use of such property and fails to withdraw from such property or its possession or use in compliance of the written notice of another person duly served upon him by the date specified in the notice as said to committed "house trespass" and "criminal trespass".

8. Admittedly, in this case, no written notice as specified in the amended Section 441 I.P.C. to withdraw from such property or its possession or use of the land alleged to be of another person i.e. opposite party no. 2 has been served on the applicants, therefore, there is no occasion for the applicants to comply with such notice and vice-versa failing to comply with the notice and as such, no offence of "House Trespass" can be said to be committed. Overlooking these facts, charge sheet has been filed under Section 448 I.P.C. against the applicants whereupon cognizance of offence was taken by learned court concerned, is bad in the eyes of law.

9. In view thereof, the impugned cognizance order dated 20.06.2017 passed in pursuance of Section 448 IPC only, is hereby **quashed**. Insofar as offence under Section 506 IPC is concerned, the same is subject matter of trial and as such, learned court concerned is hereby directed to proceed with trial as it is going on in pursuance of Section 506 IPC only except Section 448 IPC against applicants herein.

10. Accordingly, the instant application stands **allowed in part**.

October 8, 2026
Saif

(Saurabh Srivastava,J.)

Digitally signed by :-
SHAIKH SAIF ABDIN
High Court of Judicature at Allahabad