2026:AHC:207386

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 42527 of 2026

Kamlesh Kumar

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s) : Aadesh Kumar Maurya, Byas Kumar Prasad

Counsel for Opposite Party(s) : G.A.

Court No. - 72

HON'BLE DEEPAK VERMA, J.

1. Heard learned counsel for the applicant; learned AGA for the State and perused the material available on record.

2. The present application has been filed to quash the summoning order dated 07.10.2022, passed in Case No.1114 of 2020, (Jeet Narayan Maurya Vs. Ramkaran and others) under Sections 452, 323, 427 of I.P.C., Police Station Manda, District Prayagraj, pending in the Court of Additional Chief Judicial Magistrate, Court No.16, Prayagraj.

3. Counsel for the applicant submitted that applicant is innocent and has been falsely implicated in the present case. On perusal of complaint as well as statement recorded under Sections 200 and 202 Cr.P.C., no criminal offence is made out against the applicant. The cognizance/summoning order passed by learned Magistrate, is without application of judicial mind and the same is liable to be quashed. It is next submitted that applicant is on bail.

4. Per contra, learned A.G.A. for the State submitted that considering the material evidences and allegations against the applicant on record, as on date, as per prosecution case, the cognizable offence against the applicant is made out. Under the facts and circumstances of the present case as well as materials

on record against the applicant, the criminal proceedings against the applicant cannot be said to be abuse of process of Court. There is no illegality in the impugned summoning order and instant application is liable to be dismissed.

5. After having heard the learned counsel for the parties and perusing the entire record, this Court is of the view that it is well settled that the appreciation of evidence is a function of the trial court. This Court in exercise of power under Section 528 BNSS. cannot assume such jurisdiction and put an end to the process of trial provided under the law. It is also settled by the Apex Court in catena of judgments that the power under Section 528 BNSS at pre-trial stage should not be used in a routine manner but it has to be used sparingly, only in such an appropriate case, where on the face of record, the criminal proceeding is clear abuse of the process of the Court. The disputed questions of facts and defence of the accused cannot be taken into consideration at this pre-trial stage.

6. It is also well settled that at the stage of summoning the accused, the court below is not required to go into the merit and demerit of the case. Genuineness or otherwise of the allegation cannot be even determined at the stage of summoning the accused. There is no good ground to invoke inherent power under Section 528 BNSS by this Court at this stage. The relief as claimed by the applicant through this application is refused.

7. The defence version of the applicant has to be considered by the court concerned at the appropriate stage. The accused/applicant has statutory remedy of moving discharge application before the court concerned at the appropriate stage.

8. Considering the material on record, it is directed that, if objection/discharge application is filed on behalf of the applicant before the court concerned within two weeks, at appropriate stage, it is expected that the court concerned will

consider and decide the same expeditiously within a period of two months, in accordance with law.

9. With the aforesaid observations/directions, this application under Section 528 BNSS stands disposed of.

(Deepak Verma,J.)

October 5, 2026
Meenu Singh

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