2026:AHC:211436

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 43474 of 2026

Rakesh Tripathi

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Kuldeep Singh, Vikash Kumar
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 charge-sheet dated 22.12.2022 and cognizance/summoning order dated 27.07.2023 along with entire proceedings arising out of Case Crime No.37 of 2022, under Sections 420, 406, 506 IPC, P.S. Kotwali District Etawah, pending in the court of learned Chief Judicial Magistrate, Etawah.

3. Learned counsel for applicants has made only one submission before the Court that offences under Sections 420, 406, 506 I.P.C. are non-cognizable and in view of the explanation to Section 2(d) Cr.P.C., the chargesheet 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 applicants 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. Although, learned AGA opposed the prayer sought through the instant application but did not dispute the submissions so made by learned counsel for applicants.

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

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

Cr.P.C. are being reproduced for ready reference as under:-

> *"2. Definitions.-In this Code, unless the context otherwise requires,-*
>
> *(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, 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 Sections 420, 406, 506 I.P.C. shall be treated as complaint and it is to be decided as complaint and 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 27.07.2023 passed in Case Crime No.37 of 2022, summoning the applicants on the basis of chargesheet submitted by concerned Investigating Officer under Sections 420, 406, 506 I.P.C. 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.

October 7, 2026
Ashish/-

(Saurabh Srivastava,J.)

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