2026:AHC:207737

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 42631 of 2026

Haleem Alias Haleem Akhtar And Another

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Hukum Singh, Puneet Bhadauria
Counsel for Opposite Party(s)	:	G.A.

Court No. - 72

HON'BLE DEEPAK VERMA, J.

1. Heard learned counsel for the applicants; learned A.G.A. for the State and perused the record.

2. This application under Section 528 B.N.S.S. has been filed by the applicants to quash the Summoning order dated 05.06.2026 passed by the Civil Judge (Junior Division) FTC/Judicial Magistrate, Etawah, passed in Criminal Complaint Case No.20685/2024 (Najiya Bano Versus Haleem and others) being Case Crime No. 304 of 2014, under sections 452 & 323 I.P.C., Police Station Kotwali, District Etawah.

3. Learned counsel for the applicants submits that opposite party no. 2/complainant lodged F.I.R. in the year 2014, thereafter, Investigating Officer after enquiry submitted final report on 17.03.2025 against the applicants thereafter eight years, the informant/opposite party no. 2 filed protest application against the final report and protest application of informant/opposite party no. 2, was treated as complaint on 25.07.2024. At that time, the provisions of BNSS was applicable in the present case and the learned Magistrate without giving any notice to the applicant summoned them. Counsel for the applicants next submits that summoning by learned Magistrate by order dated 05.06.2026 is in contravention of Proviso to clause 1 of Section 223 B.N.S.S. which provides that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard. Learned Magistrate before taking cognizance and issuance of process has not given opportunity to

the applicants of being heard. Argument of the learned counsel for the applicant has legal force and prima-facie discloses that the applicants have not been given opportunity before taking of cognizance and issuance of process.

4. Learned AGA has not disputed the facts argued by learned counsel for the applicants.

5. The order dated 05.06.2026 by which the applicants have been summoned by the learned Magistrate is, hereby, set aside. The present application is **disposed of** with the direction that learned Magistrate shall pass a fresh order in accordance with law under Proviso 1 of Section 223 B.N.S.S. within a period of six weeks from the date of production of certified copy of this order.

(Deepak Verma,J.)

October 5, 2026
Meenu Singh

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