2026:AHC:207545

# HIGH COURT OF JUDICATURE AT ALLAHABAD

**APPLICATION U/S 528 BNSS No. - 42738 of 2026**

Sachin

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

| | | |
|---|---|---|
| Counsel for Applicant(s) | : | Anjani Kumar Shukla |
| Counsel for Opposite Party(s) | : | G.A. |

**Court No. - 72**

**HON'BLE DEEPAK VERMA, J.**

1. Heard Sri Anjani Kumar Shukla, learned counsel for the applicant and Sri Vishwa Deepak Mishra, learned AGA for the State.

2. The present 528 BNSS application has been filed to quash the impugned summoning order dated 03.09.2026 as well as Complaint Case No. 1526/2022 Summoning Order Passed by the Learned Court of Civil Judge (J.D)/F.T.C, Court No. 01 Aligarh In Complaint Case No. 1526 of 2022 (Akanksha Sharma Vs. Sachin and others) Under Section- 406 I.P.C. Police Station- Banna Devi District Aligarh.

3. Counsel for the applicant submits that it is alleged in the complaint that opposite party no.2 marriage was solemnized with the applicant on 08.12.2017 in which father of opposite party no.2 gave gold and silver jewellery to her daughter, thereafter, on account of some matrimonial discord, opposite party no.2 was ousted from her matrimonial house, then opposite party no.2 lodged FIR, in the year 2022, against the applicant and his family members U/s 498A, 323, 506, 377 I.P.C. and Section 3/4 of DP Act, thereafter, opposite party no.2 asked for her valuable assets (gold and silver jewellery, money etc.) given at the time of marriage then applicant refused to give her assets then present complaint has been lodged. He further submits that present complaint has been lodged with malice intention only to harass the applicant. Opposite party no.2 had already taken all her valuable assets and no ornaments has been kept by the applicant. Prima facie, there is no evidence of entrustment. In view of provision provided U/s 406 I.P.C., summoning by learned Magistrate is without application of judicial mind and is liable to be set aside. In

support of his contention, he has placed reliance over the judgment passed by the Hon'ble Apex Court in the cases of Neelu Chopra and another Vs. Bharti, 2009 (10) SCC 184 and in the case of Abhishek Vs. State of Madhya Pradesh, 2023 INSC 779.

4. *Per contra,* learned A.G.A. has vehemently opposed the submission raised by applicant's counsel.

5. The grounds taken in the application reveal that many of them relate to disputed question of fact. 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 impugned criminal proceeding against the applicants is abuse of the process of the Court and is liable to be quashed by this Court. 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 appropriate cases, where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceedings or where allegations made in First Information Report or charge-sheet and the materials relied in support of same, on taking at their face value and accepting in their entirety do not disclose the commission of any offence against the accused. The disputed questions of facts and defence of the accused cannot be taken into consideration at this pre-trial stage.

6. In view of the above, in the light of judgment of the Apex Court in the matters of **R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, Manik B. Vs. Kadapala Sreyes Reddy and another, 2023 Live Law (SC) 642, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P.Sharma, 1992 SCC (Cr.) 192 and lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283**, no ground for quashing the proceedings of the aforesaid case, is made out which may call for any interference by this Court in exercise of its inherent power under Section 528 BNSS as the same do not suffer from any illegality or infirmity.

7. Considered the argument advanced by applicant's counsel and the judgment of Hon'ble The Apex Court, it is apparent from the complaint that the complainant has specifically stated in para 2 that gold and silver

ornaments were given at the time of marriage and the same were kept by the husband and his family members. From the statement recorded U/s 200 Cr.P.C. it is stated that at the time of marriage, jewellery had been given to the husband and the same has not been returned. On perusal of contents of complaint, which discloses evidence in regard to entrustment of the jewellery of the complainant to the husband. It is admitted position in the society that at the time of marriage, daughters carry jewellery and other articles, which is the property of the bride and the same was kept with the husband or in-laws. After dispute, if bride resides separately and claims to be returned ornaments, jewellery and other articles, her husband and in-laws cannot refuse to return, she has right to get back her jewellery, given at the time of marriage. On perusal of FIR and other material evidence, *prima facie,* offence is made out against the applicant U/s 406 I.P.C. Wife entrusted her ornaments and jewellery to husband and her in-laws. In present case, it is alleged that *stridhan* has been kept by the applicant and has refused to return in that circumstances, allegation would come under the definition U/s 406 I.P.C., as such, no interference is warranted.

8. The present 528 BNSS application of applicant-**Sachin**, is hereby **dismissed** with the aforesaid observation.

**(Deepak Verma,J.)**

**October 5, 2026**
Nitin Verma

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