2026:AHC:226886

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 45262 of 2026

Rahishpal And 6 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s) : Gowri Chauhan, Shiv Pratap Singh Chauhan

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

Court No. - 76

HON'BLE SAURABH SRIVASTAVA, J.

1. Heard learned counsel for the applicants and learned AGA for the State.

2. The present application has been preferred for seeking quashing of chargesheet dated 21.12.2025 and cognizance/summoning order dated 25.03.2026 passed by Additional Chief Judicial Magistrate, Sikohabad, District Firozabad along with entire proceedings of Crl. Case No.12121 of 2026 (State Vs. Raheespal and others) under Section 427 IPC, arising out of Case Crime No.485 of 2025, P.S. Jasrana, District Firozabad, pending before learned Additional Chief Judicial Magistrate, Sikohabad, District Firozabad.

3. Learned counsel for applicants has made only one submission before the Court that offences under Sections 427 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 Section 427 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 25.03.2026 passed in Crl. Case No.12121 of 2026, arising out of Case Crime No.485 of 2025, summoning the applicants on the basis of chargesheet submitted by concerned Investigating Officer under Section 427 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.

November 2, 2026
Ashish/-

(Saurabh Srivastava,J.)

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