HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 45596 of 2026

Vijay Kumar And Another

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Ajit Kumar, Satya Prakash Singh
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 30.05.2017 and cognizance/summoning order dated 12.10.2017 along with entire proceedings of Case No.5258 of 2017, (State Vs. Vijay Kumar and others) arising out of Case Crime No.235 of 2017, under Sections 323, 504 IPC, P.S. Dubauliya, District Basti, pending in the court of learned Judicial Magistrate, Court No.2, Basti.

3. Learned counsel for applicants has made only one submission before the Court that offences under Sections 323, 504 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 323, 504 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 12.10.2017 passed in Case No.5258 of 2017, arising out of Case Crime No.235 of 2017, summoning the applicants on the basis of chargesheet submitted by concerned Investigating Officer under Sections 323, 504 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 27, 2026
Ashish/-

(Saurabh Srivastava,J.)

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