HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 47365 of 2026

Javed Khan

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Nilesh Kumar Dubey, Shashi Shekhar Maurya
Counsel for Opposite Party(s)	:	G.A.

Court No. - 72

HON'BLE DEEPAK VERMA, J.

1. Heard learned counsel for the applicant; 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 applicant to quash the summoning order dated 11.08.2026 as well as entire proceedings of Complaint Case No.3343 of 2023, under Sections-376, 452, 506 I.P.C., Police Station Pipraich, District Gorakhpur, pending before the Court of learned Additional Civil Judge (Junior Division), Court No.03/Judicial Magistrate, Gorakhpur.

3. Learned counsel for the applicant submits that opposite party no.2 filed application under section 156(3) Cr.P.C. on 06.05.2023 and learned magistrate called report from concerned police station. After receiving report from concerned police station, learned magistrate directed the concerned police station to register FIR against the applicant. FIR was registered as Case Crime No.647 of 2023, under sections 376, 452, 506 I.P.C. and Investigating Officer investigated the matter and submitted final report. Thereafter protest application was filed and learned magistrate by order dated 02.02.2024 accepted the protest application of the opposite party no.2 and directed concerned police station to investigate further in the aforesaid case. In compliance of order dated 02.02.2024, further investigation was conducted by the Investigating Officer. Investigating Officer after recording statement under sections 161 & 164 Cr.P.C. did not find substantial evidence against the applicants and submitted final report. After receiving final report, opposite party no.2 moved protest application. Learned magistrate treated protest application

as complaint by order dated 07.05.2025 and thereafter by order dated 11.08.2026 summoned the applicants after recording statements under sections 200 & 202 Cr.P.C. Learned counsel for the applicants next submits that protest application was filed on 11.11.2024 at that time provision of B.N.S.S. were applicable and learned magistrate treated the protest application as complaint on 07.05.2025. Learned counsel for the applicants submits that summoning by learned magistrate is against the provision Proviso 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, applicants have not been heard.

4. Per contra, learned AGA has not disputed the facts argued by learned counsel for the applicants.

5. The order dated 11.08.2026 by which the applicants have been summoned by the learned magistrate is, hereby, set aside. The applicant 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 eight weeks from the date of production of certified copy of this order.

October 28, 2026
SKD

(Deepak Verma,J.)

Digitally signed by :-
SURJIT KUMAR DEY
High Court of Judicature at Allahabad