HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 44964 of 2026

Deshraj And 3 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Birendra Kaushik
Counsel for Opposite Party(s)	:	G.A.

Court No. - 72

HON'BLE DEEPAK VERMA, J.

1. Heard Sri Birendra Kaushik, learned counsel for the applicants and Sri P. P. Pandey, learned AGA for the State.

2. The present 528 BNSS application has been filed to quash the impugned summoning order dated 01-08-2026 passed by Learned Chief Judicial Magistrate, Court No.5, Mathura arising out of Complaint Case No. 4637 of 2025 (Ishwarchand Vs. Deshraj and others) Under Sections 308(2), 351(2), 352 BNS, Police Station-Surir, District- Mathura, pending before the Learned Chief Judicial Magistrate, Court No.5, Mathura.

3. Counsel for the applicant submits that it is alleged in the complaint that both the parties were engaged in assaulting to each other and applicants received grievous injuries and lodged FIR. He further submits that complainant lodged present complaint in counterblast of the incident occurred on 05.11.2024. Present complaint has lodged after about two months by the father of co-accused. In the FIR, applicants have received grievous injuries and accused have enlarged on bail after about two months. In pursuance of complaint discloses that opposite party no.2 assaulted the applicants and summoning by learned Magistrate is without application of judicial mind.

4. *Per contra*, learned A.G.A. opposed the submission raised by applicants' 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 applicants' counsel, on perusal of complaint as well as FIR, it is apparent that the incident occurred on 05.11.2024 and both the parties were engaged in assaulting to each other and both the parties have sustained injuries. One proceeding by applicants is going on against the opposite party no.2 and his son. The complaint has lodged in regard to incident happened on 05.11.2024. It is evident from the record that both the parties were engaged in assaulting to each other and received injuries, *prima facie*, criminal offence is made out against the applicants, as such, no interference is warranted at this stage.

8. The present 528 BNSS application of applicants is hereby **dismissed** with the aforesaid observation.

October 24, 2026
Nitin Verma

(Deepak Verma,J.)

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