HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 46232 of 2026

Mohammad Naeem Ahmad And Another

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Rajendra Prasad Mishra, Satyam Mishra, Surendra Kumar
Counsel for Opposite Party(s)	:	G.A.

Court No. - 72

HON'BLE DEEPAK VERMA, J.

1. Heard Sri Rajendra Prasad Mishra, 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 Complaint and its entire proceeding and impugned summoning order dated 15/10/2024 passed by learned Additional Session Judge/ Special Judge, POCSO Court, Kushinagar at Padrauna u/s 323 IPC in Complaint no. 150 of 2022, Amirul Haq vs Shoheb Akhtar, relating to applicants.

3. Counsel for the applicant submits that it is alleged in the complaint that applicants and other accused persons entered in the house of complainant and physically molested minor daughter and wife of the complainant. Learned Magistrate summoned the applicants U/s 323 I.P.C. On perusal of complaint as well as statement recorded U/s 200 Cr.P.C., no offence under the alleged sections is made out. There is no allegation of assault by the applicants and learned Magistrate without applying his judicial mind has summoned the applicants, the same is liable to be set aside.

4. *Per contra,* learned A.G.A. vehemently 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, it

is evident that allegation made in the complaint that minor daughter of complainant was harassed by co-accused, Shoeb Akhtar then complainant made complaint in regard to activity of the co-accused then in revenge five accused persons entered in the house of complainant and assaulted with *laat, mukka* and *tamacha* and physically molested the minor daughter and wife of complainant. Statement of witnesses recorded U/s 200 Cr.P.C., there are allegation against the applicants that they entered in the house and assaulted and mishandled the complainant's wife and minor daughter. Medical examination report and other evidences, *prima facie,* discloses offence against the applicants. No interference is warranted at this stage.

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

October 23, 2026
Nitin Verma

(Deepak Verma,J.)

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