HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 46150 of 2026

Ramu And 5 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Shesh Nath Bhatt
Counsel for Opposite Party(s)	:	G.A.

Court No. - 72

HON'BLE DEEPAK VERMA, J.

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

2. The present 528 B.N.S.S. application has been filed to quash the impugned order dated 21.09.2026 passed by Session Judge, Basti in Criminal Revision No.73 of 2026, summoning order dated 05.02.2026 passed by Judicial Magistrate, Court No.21, Basti, arising out of C.M.C.No.2967 of 2024, Misc.Case No.750/12/2024 as well as entire proceeding of Complaint Case No.2967 of 2024 (Ram Shabd vs. Ramu and others), under sections 352, 351(3), 115(2) B.N.S., Police Station Lalganj, District Basti.

3. Learned counsel for the applicants submits that summoning order dated 05.02.2026 passed by learned magistrate is illegal, arbitrary and without following the provision provided under Proviso 1 of section 223 B.N.S.S. and no opportunity of hearing was provided to the applicants before taking cognizance. In view of that summoning by learned magistrate is illegal and liable to be set aside.

4. Learned counsel for the applicants has placed reliance upon Para-10 of the judgment of this Court in **Application u/s 482 No.10390 of 2024 (Prateek Agarwal vs. State of U.P. through Additional Chief Secretary Department Home Lucknow and another).** He has also placed reliance upon the judgment of Delhi High Court in Crl.M.C.No.2551 of 2025 (Dr.Rita Bakshi vs. Seema Bajaj & another) & Crl.M.C.No.3169 of 2026 (Ms.Anita Rani Mehra & another).

5. Per contra, learned A.G.A. vehemently opposed the submission raised by applicants' counsel and submitted that prima-facie offence is made out against the applicants.

6. The Hon'ble Apex Court in various judgments has held that cognizance cannot be confused with the issuance of process. According to him, cognizance had been taken, the minute the complaint was accepted to the files of the Court. Hon'ble Apex Court in **CREF Finance Ltd. v. Shree Shanthi Homes (P) Ltd.** and **Zunaid v. State of Uttar Pradesh & others** has held that the record of the Magistrate clearly indicated the words 'cognizance taken' on 01.06.2000. This Court found that even if the same was not recorded that would make no difference since cognizance taken, is of the offence and not of the offender and, therefore, issuance of process to the offender cannot be confused with cognizance. It was held that once the Court on perusal of complaint is satisfied that it discloses the commission of an offence and there is no reason to reject the complaint at that stage, and proceeds further in the matter, it must be held to have cognizance of the offence. One should not confuse taking of cognizance with issuance of process. Cognizance is taken at the initial stage when the Magistrate peruses the complaint with a view to ascertain whether commission of any offence is disclosed. Issuance of process is at a later stage when after considering the material placed before it, the Court decides to proceed against the offenders against whom a prima-facie case is made out. In Paras- 9 & 10 of Apex Court judgment in **Zunaid v. State of Uttar Pradesh & others,** the Court has held as follows:-

9. In our opinion, the above observations recorded by the High Court are absolutely erroneous in view of the catena of decisions of this Court.

*10. In **Rakesh & Another vs. State of Uttar Pradesh & Another** 1, it is observed as under: -*

> *"6. If we are to go back to trace the genesis of the views expressed by this Court in **Gopal Vijay Verma v. Bhuneshwar Prasad Sinha (1982) 3 SCC 510,** notice must be had of the decision of this Court in **H.S.Bains v. State (UT of Chandigarh) (1980) 4 SCC 631** wherein it was held that after receipt of the police report under Section 173, the Magistrate has three options: (H.S.Bains case (supra) "6. …. (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of the offence under Section 190(1)(b) on the basis of*

> *the police report and issue 1 (2014) 13 SCC 133 process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report; (3) he may take cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200. If he adopts the third alternative, he may hold or direct an inquiry under Section 202 if he thinks fit.*

Thereafter he may dismiss the complaint or issue process, as the case may be." The second and third options available to the Magistrate as laid down in H.S.Bains (supra) has been referred to and relied upon in subsequent decisions of this Court to approve the action of the Magistrate in accepting the final report and at the same time in proceeding to treat either the police report or the initial complaint as the basis for further action/enquiry in the matter of the allegations levelled therein. Reference in this regard may be made to the decision of this Court in ***Gangadhar Janardan Mhatre v. State of Maharashtra (2004) 7 SCC 768.*** *The following view may be specifically noted:*

"9. ….The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190 (1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also. [See India Carat (P) Ltd. v. State of Karnataka, (1989) 2 SCC 132]" (SCC P. 140, Para 16)."

7. Considered the arguments raised by learned counsel for the applicants. Opposite party no.2-complainant filed present application under section 173(4) B.N.S.S. The learned magistrate by order dated 17.12.2024 called a report from police station concerned. Thereafter, on 02.01.2025 learned magistrate treated application under section 173(4) B.N.S.S. as miscellaneous application and before taking cognizance on such miscellaneous application, issued notice under Proviso 1 of section 223 B.N.S.S. Applicants submitted that he has not received notice. Thereafter learned magistrate treated miscellaneous application as complaint and recorded the statement of the witnesses under sections 223 & 225 B.N.S.S. and issued process/summon by order dated 05.02.2026. Thereafter applicants preferred revision against the order dated

05.02.2026 taking ground that he was not heard before taking cognizance as per as Proviso 1 of Section 223 B.N.S.S. Learned revisional court by order dated 21.09.2026 rejected the revision of the applicants and confirm the summoning order/issuance of process by learned magistrate against the applicants. Submission of the applicants is that the applicants were not heard before taking cognizance as per Proviso 1 of Section 223 B.N.S.S., is not sustainable as order dated 02.01.2025 reveals that learned magistrate before taking cognizance issued notice under Proviso 1 of Section 223 B.N.S.S. Revisional court in his order has observed that as per as police report, summon was served to the applicants through constable and applicants have signature over the summon notice and notice/summon returned to the Court on 27.01.2025. Record discloses that notice was sent to the applicants and same was served to the applicants. In view of that learned magistrate before taking cognizance issued notice and notice was served to the applicants, which is apparent from order of the revisional court. Issuance of process against the applicants by learned magistrate is just and proper. I have perused the facts and other material evidence. Prima-facie offence is made out against the applicants. No interference is warranted. The present 528 B.N.S.S. application of applicants- **Ramu, Chandrawati, Ram Achal, Raj Kumari, Ajay & Umesh** is hereby **dismissed** with the aforesaid observation.

October 23, 2026
SKD

(Deepak Verma,J.)

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