2026:AHC:211752

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 46329 of 2025

Arun Sharma

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Ajeet Shukla, Neelam Mishra
Counsel for Opposite Party(s)	:	G.A.

Court No. - 79

HON'BLE MADAN PAL SINGH, J.

1. Heard learned counsel for the parties and perused the material available on record.

2. This application under Section 528 of B.N.S.S. has been filed by the applicant with a prayer to quash the charge-sheet dated 30.04.2025, cognizance/summoning order dated 08.10.2025 passed by the learned A.C.J.M.-III, Court No. 14, Jaunpur, as well as the entire proceedings of Case Crime No. 40 of 2025, under Sections 115(2), 352, 351(2) and 324(4) of the B.N.S., Police Station Singramau, District Jaunpur, pending in the Court of learned A.C.J.M.-III, Court No. 14, Jaunpur.

3. Learned counsel for the applicant submitted that on the basis of the First Information Report lodged by opposite party no. 2 at Police Station Singramau, District Jaunpur, Case Crime No. 40 of 2025 was registered under Sections 351(2) and 115(2) B.N.S. However, after completion of the investigation, the Investigating Officer submitted a charge-sheet under Sections 115(2), 352, 351(2) and 324(4) B.N.S. On the basis thereof, the learned Magistrate took cognizance of the aforesaid offences.

4. Learned counsel for the applicant submitted that the offences under Sections 115(2), 352, 351(2) and 324(4) B.N.S. are non-cognizable. Hence, in view of the Explanation to Section 2(1)(h) of the B.N.S.S. [old Section 2(d) of the Code of Criminal Procedure], the case could not have proceeded as a State case and was liable to be treated as a complaint case. He further submitted that the learned Magistrate has

erroneously treated the charge-sheet as a State case and taken cognizance thereon. In support of his submissions, he has relied upon the judgment of the Division Bench of this Court in Criminal Misc. Writ Petition No. 1932 of 2025 (Gatish and 3 Others Vs. State of U.P. and Others).

5. It is not disputed that the offences under Sections 115(2) and 351(2) B.N.S. are non-cognizable.

6. The Explanation to Section 2(1) of the B.N.S.S. [old Section 2(d) of the Code of Criminal Procedure] reads as under:

> *"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 aforesaid Explanation, a report submitted by a police officer after investigation, disclosing the commission of a non-cognizable offence, is to be deemed to be a complaint and the police officer submitting such report is to be deemed to be the complainant. In other words, a charge-sheet submitted by the police in respect of a non-cognizable offence is to be treated as a complaint, and the procedure prescribed for hearing a complaint case shall be applicable thereto.

8. In the present case, from the material brought on record, it transpires that the charge-sheet submitted by the Investigating Officer, instead of being treated as a complaint, has been treated by the concerned Magistrate as a State case, which is not permissible in law.

9. Learned A.G.A. vehemently opposed the submissions made by learned counsel for the applicant.

10. Having considered the submissions made by learned counsel for the parties, perused the material available on record and examined the relevant provisions of law, this Court is of the view that the submissions advanced by learned counsel for the applicant have force and are liable to be accepted.

11. For the aforesaid reasons, the present application is **allowed in part**. The impugned order, whereby the present criminal case has been treated as a State case, is hereby set aside.

12. It is made clear that the case shall be treated as a complaint case and the procedure prescribed for hearing a complaint case shall be followed by the court concerned. The court concerned shall proceed in accordance with law and consider the question of summoning the accused after following the procedure prescribed under law.

October 8, 2026
Akbar

(Madan Pal Singh,J.)

Digitally signed by :-
MOHAMMAD AKBAR
High Court of Judicature at Allahabad