2026:AHC:228266

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 48023 of 2026

Zaini Khan And Another

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Mohammad Alam
Counsel for Opposite Party(s)	:	G.A.

Court No. - 76

HON'BLE SAURABH SRIVASTAVA, J.

1. This matter is being taken up in the mentioned category. Heard learned counsel for the applicants and learned AGA for the State.

2. The present application has been preferred for seeking quashing of charge-sheet dated 01.08.2026 along with cognizance/summoning order dated 17.08.2026 passed by learned Additional Chief Judicial Magistrate, Court No.3, Kanpur Nagar as well as entire proceedings of Case No.87817 of 2026 (State vs. Zaini Khan and Others) arising out of Case Crime No.61 of 2026, under Sections 115(2), 352, 351(2) BNS, P.S. Chamanganj, District- Kanpur Nagar.

3. Learned counsel for applicants has made only one submission before the Court that offences under Sections 115(2), 352, 351(2) BNS are non-cognizable and in view of the explanation to **Section 2(1)h BNSS**, the charge sheet filed by the Investigating Officer concerned cannot proceed as a police case and the same is liable to be proceeded with as a complaint case. In support of his submission, learned counsel of applicants has placed reliance upon the judgments passed in the case of **Shakila Bano and others Vs. State of U.P. and another, 2008 (61) ACC 636**.

4. Although, learned AGA opposed the prayer sought through the instant application but did not dispute the submissions so made by learned counsel for applicants.

5. Before proceeding further, the relevant provisions of **Section 2(1)h BNSS** are being reproduced for ready reference as under:-

"2. Definitions.- (1) In this Sanhita, unless the context otherwise requires,-

(h) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Sanhita, that some person, whether known or unknown, has committed an offence, but does not include a police report.

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."

6. In view of the above explanation, charge sheet submitted by the concerned Investigating Officer in the present case under Sections 115(2), 352, 351(2) BNS shall be treated as complaint and it is to be decided as complaint and the learned Magistrate fell in legal error by taking cognizance as State case and the orders passed by him is, therefore, liable to be set aside.

7. Since the legal issue has been raised by learned counsel for the applicants and as such process to issue notice to opposite party no.2 is hereby dispensed with.

8. In view thereof, cognizance/summoning order dated 17.08.2026 passed by learned Additional Chief Judicial Magistrate, Court No.3, Kanpur Nagar against the applicants on the basis of charge-sheet submitted by concerned Investigating Officer under Sections 115(2), 352, 351(2) BNS treating the same as State case, is set aside, in respect of applicant(s) herein.

9. Accordingly, the instant application is **partly allowed**.

10. However, it is made clear that this order shall not preclude the learned court concerned to proceed with the case treating it as complaint case, if required, in accordance with law.

November 2, 2026
Saif

(Saurabh Srivastava,J.)

Digitally signed by :-
SHAIKH SAIF ABDIN
High Court of Judicature at Allahabad