HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 48356 of 2026

Ansar Ali And 4 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s) : Aushim Luthra, Harishchandra Yadav, Utkarshni Singh

Counsel for Opposite Party(s) : G.A.

Court No. - 72

HON'BLE DEEPAK VERMA, J.

1. Heard learned counsel for the applicants; learned A.G.A. for the State and perused the record.

2. This application under Section 528 BNSS has been filed by the applicants with the prayer to quash the impugned summoning order dated 01.06.2026 passed by the learned Additional Chief Judicial Magistrate, Court No. 5, Agra, whereby the applicants have been summoned to face trial under Section 316(2) B.N.S. as well as the entire proceedings of Complaint Case No. 22061 of 2025 (Smt. Rubina Begum Versus Ansar Ali and others), under Section 316(2) B.N.S., Police Station Shahganj, District Agra, pending in the Court of learned Additional Chief Judicial Magistrate, Court No. 5, Agra.

3. It is argued by the learned counsel for the applicants that present complaint has been lodged by the opposite party no. 2-Smt. Rubina Begum wife of applicant no.1-Ansar Ali against the applicants with malice intention only to harass the applicants. The applicants earlier filed an application under Section 528 B.N.S.S No. **50993 of 2025,** under Sections 85, 115(2), 352, 351(2) B.N.S. and Section 3/4 D.P. Act and Section 3/4 Muslim Women (Protection of Rights on Marriage) Act, 2019 wherein this Court vide order dated 19.12.2025 referred the matter to Mediation and Conciliation Centre, High Court, Allahabad for settlement. He further argued that filing of the present complaint on the same set of facts, despite the pendency of the earlier proceedings, is a clear abuse of

the process of the Court. He also submitted that the allegations alleged in the complaint are false and baseless and not supported by any material evidence. Cognizance and summoning by learned Magistrate is without application of judicial mind. He next submitted that summoning by learned Magistrate by order dated 01.06.2026 is in contravention of Proviso to Clause 1 of Section 223 B.N.S.S. which provides that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard. Learned Magistrate before taking cognizance and issuance of process, applicants have not been heard. Argument of the learned counsel for the applicants having legal force and prima facie discloses that the applicants have not been given opportunity before taking cognizance and issuance of process.

4. Per contra, learned A.G.A. has not disputed the facts argued by learned counsel for the applicants.

5. The cognizance and summoning order dated **01.06.2026** by learned Magistrate is hereby **set aside.** The present application is **disposed of** with direction that learned Magistrate shall pass a fresh order in accordance with law under Proviso 1 of Section 223 B.N.S.S. within two months from the date of production of certified copy of this order.

(Deepak Verma,J.)

November 2, 2026
T.S.

Digitally signed by :-
TRIBHUWAN SINGH
High Court of Judicature at Allahabad