2026:AHC:230711

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 49710 of 2026

Radheshyam And Another

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s) : Ajatshatru Singh, Himanshu Mishra
Counsel for Opposite Party(s) : G.A.

Court No. - 72

HON'BLE DEEPAK VERMA, J.

1. Heard learned counsel for the applicants; Sri P.P. Pandey, learned AGA for the State and perused the record.

2. The present 528 B.N.S.S. application has been filed to quash the order dated 01.09.2026 passed by the learned Judicial Magistrate, Court No. 3, Prayagraj, whereby the discharge application dated 11.06.2026 filed by the applicants under Section 245 Cr.P.C. (Section 268 B.N.S.S.) has been rejected in Complaint Case No.135 of 2017 (Ashok Kumar Dwivedi Vs. Radheshyam & Others); under Sections 323, 506 and 427 IPC, Police Station Holagarh, District Prayagraj.

3. It is alleged in the complaint that on 02.11.2016 at about 8 am. when the opposite party no. 2 was constructing the ridges (मेड़) on his plot, the applicants came there with *lathi* and *danda* and hurled abuses. The applicant no. 1, Radhey Shyam tried to chock out the complainant by stepping up on his neck and applicant no. 2, Pankaj assaulted him by lathi on back, legs and mouth. Thereafter, the informant/complainant went to lodge the complaint before the police station but the concerned police station did not register the same, hence the present complaint. Thereafter, the learned Magistrate recorded statement under Section 200 Cr.P.C. and 202 Cr.P.C. and summoned the applicants.

4. Learned counsel for the applicants submits that applicants appeared before the trial court and contested the matter and the submission of complainant and other witnesses were recorded under section 244 Cr.P.C. The applicants moved discharge application on the ground that applicants and opposite party no. 2 are cousins. The applicant no. 1 is uncle of the complainant and father of the complainant died in the year 2005 and partition was made between the complainant's father and applicant no. 1. The applicant no. 1 cultivated the potato crop in the plot but opposite party no. 2/complainant destroyed the potato crop and was making partition of the plot. It is next submitted that on perusal of the statement recorded under Section 244 Cr.P.C. and witnesses, *prima facie*, no offence under the alleged section 323 I.P.C. is made out. It is further submitted that present complaint has been lodged with the allegation that the applicants assaulted the opposite party no. 2 but the complaint is not supported by any medical examination report. The learned Magistrate without considering the submission raised by counsel for the applicants, in arbitrary manner, rejected the discharge application of the applicants.

4. *Per contra*, learned A.G.A. opposed the arguments raised by applicants' counsel and submits that arguments raised by learned counsel for the applicants are factual aspects of the matter, which cannot be considered at this stage.

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 an

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 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. Considered the argument raised by counsel for the parties. On perusal of complaint and statement of witnesses recorded under Section 225 BNSS, prima facie, discloses that applicants came and hurled abuses to complainant and assaulted the complainant. When the complainant went to police station for lodging complaint, no report was lodged and no medical examination was done. From the statement, it is apparent that applicant no. 1 Radheyshyam, who is uncle of the complainant and accused applicant no. 2 Pankaj Kumar hit the leg of the complainant as a result his leg swelled up. P.W. 2 also supported the complaint's version and submitted that he reached on the spot and found that applicants and opposite party no. 2 were engaged in hurling abusive language. The statement of P.W. 1 and P.W. 2 recorded under sections 244 Cr.P.C., prima facie, discloses offence against the applicants. The offence in which the applicants have been summoned, prima facie, at this stage, it cannot be said that no offence is made out against the applicants and applicants should be discharged. Moreover, the learned Magistrate has examined the witnesses and appreciated the same. The Apex Court in its judgment passed in the case of ***Manik B. Vs. Kadapala Sreyes Reddy and another, 2023 Live Law (SC) 642***, para 6 and 7 are quoted herein below:-

> *" 6. Whether the testimony of the witnesses is trustworthy or not has to be found out from the examination-in-chief and the cross-examination of the witnesses when they stand in the box at the stage of such trial.*

7. Such an exercise, in our considered view, is not permissible while exercising the jurisdiction under Section 482 Cr.P.C."

7. 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 & Anr. 2023 LiveLaw (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.

8. The present application under Section 528 B.N.S.S. lacks merit and is, accordingly, **dismissed**.

(Deepak Verma,J.)

November 5, 2026
Meenu Singh

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