2026:AHC:207590

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 52254 of 2025

Yunus And Another

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Ranjeet Kumar Asthana, Sunita Singh
Counsel for Opposite Party(s)	:	Avnish Kumar Srivastava, G.A.

Court No. - 79

HON'BLE MADAN PAL SINGH, J.

1. Rejoinder affidavit has been filed today, is taken on record.

2. Heard Mr. Ranjeet Asthana, learned counsel for the applicants, learned AGA for the State, Mr. Avnish Kumar Srivastava, learned counsel for the opposite party no.2.

3. The present application under Section 528 BNSS has been filed by the applicants with the prayer to set aside the cognizance order dated 01.08.2025 passed by learned Civil Judge (J.D.)/Judicial Magistrate, Budhana Muzaffar Nagar as well as entire proceeding of Case No.944/9 of 2025 arising out of Case Crime No.124 of 2023, under Sections 420, 467, 468 and 471 IPC, Police Station Phugana, District Muzaffer Nagar.

4. The prosecution case, in brief, is that Smt. Farzana with her husband Yunus and other co-accused persons, fraudulently obtained allotment of a Fair Price Shop by using a forged High School mark-sheet and certificate. Although Janhitkari Inter College reported that the relevant serial number had not been issued in 1991, the shop was allotted to Smt. Farzana. It is further alleged that the applicants, in collusion with the other co-accused persons Mausam Ali, Iqbal, Jullu Khan and Parvez, have obtained possession of the shop through deception and subsequently sold it but later on, the said allotment was cancelled by the Sub-Divisional Magistrate, Budhana.

5. Learned counsel for the appellants submits that no offence is made out against the appellants and that the present prosecution has been instituted with a mala fide intention to harass the appellants. The mark-sheet, which was found forged, has never been submitted by the applicants. The mark-

sheet submitted by the applicants was changed by the opposite party no.2 in collusion with the authorities. The appellants have not committed any offence as alleged in the impugned FIR. From a perusal of the FIR as well as statements of the witnesses, prima facie, no offence is made out against the appellants.

6. Learned A.G.A. as well as learned counsel for the informant vehemently opposed the application and have contended that the applicants, in collusion with the other co-accused persons, have obtained allotment of the Fair Price Shop on the basis of forged educational documents. During investigation, the document relied upon for obtaining the allotment has been found to be forged. It is further submitted that the question as to who actually submitted the forged mark-sheet, who procured or prepared it, and whether the applicants had knowledge of its forged nature are matters requiring appreciation of evidence and cannot appropriately be adjudicated in proceedings under Section 528 BNSS. It is further submitted that the Court below has rightly summoned the applicants and no interference is required by this Court in the impugned orders as well as the on going proceedings.

7. I have considered the submissions advanced by learned counsel for the parties and perused the record.

8. The specific defence of the applicants that they did not submit the forged mark-sheet is essentially a question of fact, which can be properly examined by the trial court on the basis of the evidence adduced by the prosecution and the defence. Merely because the applicants dispute having submitted the forged document cannot, at this stage, be a ground for quashing the criminal proceedings.

9. From the perusal of material on record and looking into the facts of the case at this stage it cannot be said that no offence is made out against the applicants. All the submissions made at the bar relates to the disputed question of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C./528 BNSS. At this stage only prima facie case is to be seen.

10. Hon'ble Supreme Court in the matter of ***State of Haryana Vs. Bhajan Lal 1992 Supp (1) SCC 335*** has laid down the guidelines under which circumstances the Court should, in its inherent power, entertain an application under Section 482 Cr.P.C. The guidelines are as follows:-

"(i) Where the allegations made in the first information report or

the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(ii) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(iii) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(iv) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(v) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(vi) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(vii) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

11. Further, the Hon'ble Supreme Court in the cases of ***M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra, AIR 2021 SC 1918, R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, 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 has held that only those cases in which no prima facie case is made out

can be considered in an application under Section 528 BNSS.

12. The instant application does not fall under the guidelines laid down by the Hon'ble Supreme Court in the judgments mentioned above and followed in a number of matters. Moreover, the facts as alleged cannot be said that, prima facie, no offence is made out against the applicants. It is only after the evidence and trial, it can be seen as to whether the offence, as alleged, has been committed or not.

13. Hence, the instant application filed under Section 528 BNSS cannot be entertained and is, accordingly, **dismissed**.

October 5, 2026
Ajeet

(Madan Pal Singh,J.)

Digitally signed by :-
AJEET KUMAR PATEL
High Court of Judicature at Allahabad