



2026:AHC:180729

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 14022 of 2026

Mohd Hasrat And 4 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Arun Kumar Singh
Counsel for Opposite Party(s) : Abhinab Mishra, Anupam Tripathi, G.A.

Court No. - 80

HON'BLE NAND PRABHA SHUKLA, J.

1. Heard Mr. Arun Kumar Singh, learned counsel for the applicants, Mr. Abhinab Mishra, learned counsel for the opposite party No. 2, learned A.G.A. for the State and perused the record.

2. The present application under Section 528 BNSS has been filed with a prayer to allow the present Criminal Misc. Application and quash the entire proceeding of Case No. 27285 of 2025 (State versus Wasim and others), Case Crime No.147 of 2025 arising out of Charge sheet dated 01.08.2025, under Section 61(2) of B.N.S., Police Station-Islamnagar, District-Budaun pending in the Court of learned 1st Additional Civil Judge (Junior Division)/ Judicial Magistrate Budaun as well as summoning order dated 21.11.2025 passed by learned 1st Additional Civil Judge (Junior Division)/Judicial Magistrate Budaun and to stay the further proceeding of the aforesaid Case.

3. Learned counsel for the applicants states that in an application u/s 528 BNSS No. 6846 of 2026 (Wasim Khan Vs. State of U.P. and Another) filed by the co-accused, the Coordinate Bench of this Court vide order dated 25.02.2026 had allowed the petition.

4. The order passed by the Coordinate Bench in an application under Section 528 BNSS No. 6846 of 2026 (Wasim Khan Vs. State of U.P. and Another) reads as under:

"1. Heard Sri Arun Kumar Singh, learned counsel for applicant, Sri Abhinab Mishra, learned counsel for opposite party no. 2 and learned AGA for State.

2. Present application has been preferred with prayer to quash entire proceeding of

Case no. 27285 of 2025 (State vs. Wasim and others) arising out of Case Crime no. 147 of 2025 under sections 318(4), 352, 351(3), 338, 336(3), 340(2), 61(2) of BNS, PS- Islamnagar, District Budaun as well as charge sheet dated 1.8.2025 and summoning order dated 21.11.2025 passed by learned 1st, Additional Civil Judge (Junior Division)/Judicial Magistrate, Budaun.

3. Brief facts of the case are that a power of attorney has been executed by real brother of applicant namely Naim Khan in favour of applicant on dated 12.3.2021. On the basis of power of attorney, applicant sold the shop in favour of one Mohd. Hasrat through registered sale deed dated 15.01.2025. The son of Sri Naim Khan namely Sri Masroor Khan did not like the act of his father as the complianant was angry with his father as well as with applicant and he moved an application u/s 173(4) BNSS on 15.4.2025 before learned Judicial Magistrate, 1st, Budaun. The application filed by opposite party no. 2 has been dismissed by learned Civil Judge, Junior Division/Judicial Magistrate, Bisauli, Budaun and by concealing this fact that application u/s 173(4) of BNSS has been dismissed, on dated 15.4.2025 lodged the present FIR against the applicant herein wherein after conduction of inquiry charge sheet has been submitted whereupon cognizance order has been passed which has been challenged through instant application.

4. It is contended by learned counsel for applicant that applicant has been falsely implicated in the present case by way of lodging present FIR. It is further submitted that once for same cause of action, application under Section 173(4) BNSS preferred at the behest of opposite party no. 2 has already been dismissed with the observation that matter is purely civil in nature, opposite party no. 2 lodged the present FIR concealing this fact which is not sustainable in the eye of law and as such entire proceeding is liable to be quashed and set aside.

5. Per contra, Sri Abhinab Mishra, learned counsel for opposite party no. 2 and learned AGA for State although vehemently opposed the prayer sought through instant application but could not dispute the aforesaid arguments.

6. After hearing the rival submissions extended by learned counsels for the parties and perusing the records, this Court finds that once the remedy for lodging FIR has been opted by opposite party no. 2 by way of preferring specific application under section 173(4) BNSS and the same has been categorically denied, while rejecting the application with specific finding that the matter pertains to a civil dispute, it is the opposite party no. 2 who concealed the fact in shape of order dated 15.4.2025, before police authority and got successfully lodged the FIR by way of implicating applicant in the same allegation which has been denied by court of law vide order dated 15.4.2025.

7. Sri Abhinab Mishra, learned counsel for opposite party no. 2 on specific query fairly admitted that this is not possible as per law since every applicant whosoever is

seeking any remedy available on statutory law must come with clean hands by way of disclosing each and every fact which has happened in the order.

*8. The argument so raised by learned counsel for the applicant seems to be justified as such, entire proceeding of Case no. 27285 of 2025 (State vs. Wasim and others) arising out of Case Crime no. 147 of 2025 under sections 318(4), 352, 351(3), 338, 336(3), 340(2), 61(2) of BNS, PS- Islamnagar, District Budaun which include charge sheet 1.8.2025 along with summoning order 21.11.2025 are hereby **set aside only in respect of applicant herein.***

*9. The instant application u/s 528 BNSS stands **allowed** accordingly.*

10. However, this order will not be an impediment for taking specific remedy available under the civil law before opposite party no. 2."

5. Accordingly, in the interest of justice, the application u/s 528 BNSS filed by the applicants is **allowed** in the aforesaid terms.

August 31, 2026
Shivani Sri.

(Nand Prabha Shukla,J.)