



2026:AHC:174056

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 8848 of 2026

Ashish Mishra

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Girja Shanker Mishra, Mohd Ghaus Ali, Somya Dwadash Shreni
Counsel for Opposite Party(s) : Somya Dwadash Shreni, G.A.

Court No. - 74

HON'BLE DEEPAK VERMA, J.

1. Heard learned counsel for the applicant and Sri Sanjay Kumar Singh, learned counsel on behalf of State and perused the record.
2. The present 528 B.N.S.S. application has been filed to quash the cognizance/summoning order dated 11.11.2025 as well as entire proceedings of Case No.291 of 2025 (State Vs. Satish Kumar Mishra & others) arising out the Case Crime No.0443 of 2025, Under Sections 223, 244 of B.N.S. 2023, Police Station Handia, District Commissionerate Prayagraj, pending in the court of Additional Chief Judicial Magistrate, Court No.08.
3. The informant who is posted as Lekhpal, lodged F.I.R. against the applicant and another co-accused persons alleging that in compliance of the order of Zilaadhikari Handia in village Sarai Civil Urf Khaptiha inquired the property of Gangster/Ex-MLA Vijay Kumar Mishra son of Ramdev Mishra in the Gangsters Act Case Crime No. 89 of 2003 under Sections 147, 148, 149, 302, 307, 504, 506, 120 I.P.C. and Section CLA Act and 2/3 U.P. Gangsters and Anti Social Activities (Prevention) Act attached by the District Magistrate Allahabad (Prayagraj) vide order dated 24.10.2009, under Section 14(1) of the Gangsters Act and U.P. Ziladhikari was administrator of aforesaid property, therefore, informant inquired and found that the applicant and other co-accused have constructed two rooms teen shed and cultivating over the Araj No.578M/0.2970 hectare.
4. Counsel for the applicant submits that applicant is innocent and has been

falsely implicated in the present case on account of rivalry with the uncle of the applicant. The applicant is nephew of Vijay Kumar Mishra having no concern with the co-accused. The applicant is a practicing advocate in Allahabad High Court and is living separately. The allegation alleged against the applicant is false, baseless and not supported by any evidence. The summoning by the learned Magistrate is without application of judicial mind. The learned Magistrate has passed non speaking order and in cursory manner, issued summons against the applicant. Counsel for the applicant has placed reliance upon the judgment of Apex Court in **JM Laboratories and others Vs. State of Andhra Pradesh** 2025 (2) Ald (Crl.) 265 (SC).

5. *Per contra*, Sri Sanjay Kumar Singh, learned counsel on behalf of State has submitted that on perusal of F.I.R. as well as statement recorded by the I.O., prima facie discloses offence against the applicant and the applicant forcibly and deliberately broken the seal and constructed two rooms. It is next submitted that impugned summoning order is just and proper and after perusing the available evidence produced by the I.O., the learned Magistrate has summoned the applicant.

6. Learned Magistrate on 11.11.2025 passed the following order:

"मु0अ0सं0 443/25 में प्रकरण में विवेचक द्वारा आरोप पत्र प्रेषित किया गया है।

समस्त प्रपत्रों का अवलोकन किया अभियुक्तगण सतीश मिश्रा, आशीष मिश्रा, प्रेमशंकर मिश्रा उर्फ बब्बू, बिन्दू देवी, के विरुद्ध अपराध का संज्ञान लिया जाता है। अभियुक्तगण सतीश मिश्रा, आशीष मिश्रा, प्रेमशंकर मिश्रा उर्फ बब्बू, बिन्दू देवी उपरोक्त के विरुद्ध धारा 223, 244 बीएनएस के अपराध के विचारण हेतु सम्मन जारी हो। दर्ज रजिस्टर हो। वास्ते उपस्थिति अभियुक्तगण सतीश मिश्रा, आशीष मिश्रा, प्रेमशंकर मिश्रा उर्फ बब्बू, बिन्दू देवी दिनांक 01.12.2025 को पेश हो।"

7. The learned Magistrate has taken cognizance and issued process after perusing the case diary and record available. On perusal of evidence collected by the I.O., prima facie offence, discloses against the applicant.

8. The Hon. Apex Court in **Pramila Devi and Others Vs. State of Jharkhand and Another**, 2025 SCC OnLine SC 886 has held thus:

"14. *Firstly*, whether the Additional Judicial Commissioner while taking cognizance has to record detailed reasons for taking cognizance? *Secondly*, whether the FIR itself was instituted with *mala fide* intention and was liable to be quashed?

15. Coming to the first issue, we have no hesitation to record that the approach of the High Court was

totally erroneous. Perusal of the Order taking cognizance dated 13.06.2019 discloses that the Additional Judicial Commissioner has stated that the ‘case diary and case record’ have been perused, which disclosed a *prima facie* case made out under Sections 498(A), 406 and 420 of the IPC and Section 3 (1)(g) of the SC/ST Act against the accused including appellants. Further, we find the approach of the Additional Judicial Commissioner correct inasmuch as while taking cognizance, it firstly applied its mind to the materials before it to form an opinion as to whether any offence has been committed and thereafter went into the aspect of identifying the persons who appeared to have committed the offence. Accordingly, the process moves to the next stage; of issuance of summons or warrant, as the case may be, against such persons.

16. In the present case, we find that the Additional Judicial Commissioner has taken cognizance while recording a finding that - from a perusal of the case diary and case record, a *prima facie* case was made out against the accused, including the Appellants. In *Bhushan Kumar v. State (NCT of Delhi)*, (2012) 5 SCC 424, this Court held that an order of the Magistrate taking cognizance cannot be faulted only because it was not a reasoned order; relevant paragraphs being as under:

‘14. Time and again it has been stated by this Court that the summoning order under Section 204 of the Code requires no explicit reasons to be stated because it is imperative that the Magistrate must have taken notice of the accusations and applied his mind to the allegations made in the police report and the materials filed therewith.

15. In *Kanti Bhadra Shah v. State of W.B.* [(2000) 1 SCC 722 : 2000 SCC (Cri) 303] the following passage will be apposite in this context : (SCC p. 726, para 12)

“12. If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail-paced progress of proceedings in trial courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial.”

(emphasis supplied)

16. In *Nagawwa v. Veeranna Shivalingappa Konjalgi* [(1976) 3 SCC 736 : 1976 SCC (Cri) 507] this Court held that it is not the province of the Magistrate to enter into a detailed discussion on the merits or demerits of the case. It was further held that in deciding whether a process should be issued, the Magistrate can take into consideration improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations. The Magistrate has

been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. It was further held that : (SCC p. 741, para 5)

“5. ... Once the Magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused.”

17. In Chief Controller of Imports & Exports v. Roshanlal Agarwal [(2003) 4 SCC 139 : 2003 SCC (Cri) 788] this Court, in para 9, held as under : (SCC pp. 145-46)

“9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. This question was considered recently in U.P. Pollution Control Board v. Mohan Meakins Ltd. [(2000) 3 SCC 745] and after noticing the law laid down in Kanti Bhadra Shah v. State of W.B. [(2000) 1 SCC 722 : 2000 SCC (Cri) 303] it was held as follows: (U.P. Pollution case [(2000) 3 SCC 745], SCC p. 749, para 6)

‘6. The legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to the accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order.’”

18. In U.P. Pollution Control Board v. Bhupendra Kumar Modi [(2009) 2 SCC 147 : (2009) 1 SCC (Cri) 679] this Court, in para 23, held as under : (SCC p. 154)

“23. It is a settled legal position that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused.”

19. This being the settled legal position, the order passed by the Magistrate could not be faulted with only on the ground that the summoning order was not a reasoned order.’

(emphasis supplied)

17. The view in Bhushan Kumar (supra) was reiterated in Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420 and State of Gujarat v. Afroz Mohammed Hasanfatta, (2019) 20 SCC 539. This Court in Rakhi Mishra v. State of Bihar, (2017) 16 SCC 772 restated the settled proposition of law enunciated in Sonu Gupta v. Deepak Gupta, (2015) 3 SCC 424, as under:

‘4. We have heard the learned counsel appearing for the parties. We are of the considered opinion that the High Court erred in allowing the application filed by Respondents 2, 4, 5, 6, 7, 8, 9 and 10 and quashing the criminal proceedings against them. A perusal of the FIR

would clearly show that the appellant alleged cruelty against Respondents 2, 4, 5, 6, 7, 8, 9 and 10. This Court in *Sonu Gupta v. Deepak Gupta* [*Sonu Gupta v. Deepak Gupta*, (2015) 3 SCC 424 : (2015) 2 SCC (Cri) 265] held as follows : (SCC p. 429, para 8)

“8. ... At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence ... to find out whether a prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor is he required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials would lead to conviction or not.”

5. The order passed by the trial court taking cognizance against R-2 and R-4 to R-9 is in conformity with the law laid down in the above judgment. It is settled law that the power under Section 482 CrPC is exercised by the High Court only in exceptional circumstances only when a prima facie case is not made out against the accused. The test applied by this Court for interference at the initial stage of a prosecution is whether the uncontroverted allegations prima facie establish a case.’

(emphasis supplied)”

9. 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 482 Cr.P.C. 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 482 Cr.P.C. 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.

10. Considering the argument raised by applicant's counsel and perused the record, it is evident that prima facie offence is made out. 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."

11. 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. The summoning order dated 11.11.2025 passed by the learned Magistrate is just and proper.

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

(Deepak Verma,J.)

August 18, 2026

Meenu Singh