



2026:AHC:167294

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 859 of 2026

Anshu

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Gaurav Mishra, Shiv Sharan Tripathi
Counsel for Opposite Party(s)	:	G.A.

Court No. - 81

HON'BLE MADAN PAL SINGH, J.

1. Heard learned counsel for the applicants, learned A.G.A. for the State-opposite parties and perused the record.
2. The present application has been filed praying for quashing the entire proceedings of Case No.11558 of 2023, State Vs. Anshu and Others, arising out of Case Crime No.65 of 2022, under Section 174-A I.P.C., Police Station Ganj Dundwara, District Kasganj, including Charge-sheet No.79 of 2022 dated 14.06.2022, the cognizance and summoning order dated 01.03.2023 passed by the Chief Judicial Magistrate, Kasganj, as well as the entire consequential proceedings.
3. Learned counsel for the applicants submits that the impugned proceedings are wholly without jurisdiction and constitute an abuse of the process of law. It is submitted that the FIR under Section 174-A I.P.C. was registered by the Station House Officer on 02.04.2022 on his own, without there being any written complaint by the public servant concerned as contemplated under Section 195(1)(a) Cr.P.C. It is further submitted that the charge-sheet was submitted on the basis of the said FIR and the learned Chief Judicial Magistrate mechanically took cognizance on 01.03.2023 without considering the statutory embargo contained in Section 195 Cr.P.C.
4. Learned counsel for the applicants further submits that neither any summons nor any bailable warrant, non-bailable warrant or proclamation under Section 82 Cr.P.C. was ever served upon the applicants in accordance with law. The applicants had no knowledge of the impugned proceedings and came to know about the same only in the month of November, 2025. It is further submitted that the impugned cognizance order does not even mention the penal provision or the names of the accused persons, demonstrating complete non-application of judicial mind.
5. It has further been argued that the very foundation of the prosecution is

illegal inasmuch as an FIR under Section 174-A I.P.C. could not have been registered at the instance of the police without a written complaint of the competent public servant. The proceedings, therefore, are vitiated from their inception.

6. Learned counsel has also drawn the attention of the Court to the fact that the applicants were earlier implicated in Case Crime No.182 of 2021, Police Station Patiyali, District Kasganj, as well as the proceedings under the U.P. Gangsters and Anti-Social Activities (Prevention) Act, both of which have already been quashed by this Court. It is submitted that the present prosecution under Section 174-A I.P.C. is only a consequential proceeding arising out of those criminal cases and deserves to be quashed on the same principles.
7. In support of his submissions, learned counsel for the applicants has placed reliance upon the judgment of this Court in **Application U/S 482 No.18403 of 2021 (Ramendra Sharma and 2 Others Vs. State of U.P. and Another)**, decided on 09.09.2022, the judgment of this Court in **Criminal Misc. Writ Petition No.12772 of 2020 (Yogeshwar Sood and Another Vs. State of U.P. and Others)** and the judgment of the Hon'ble Supreme Court in **Daulat Ram Vs. State of Punjab, AIR 1962 SC 1206**.
8. Per contra, learned A.G.A. opposed the prayer and submitted that the applicants had failed to appear before the Court despite issuance of coercive process and, therefore, the prosecution under Section 174-A I.P.C. has rightly been initiated. However, learned A.G.A. could not dispute the legal position laid down in the judgments relied upon by learned counsel for the applicants.
9. I have considered the rival submissions advanced by learned counsel for the parties and have perused the material available on record.
10. Section 174-A I.P.C. provides punishment for failure to appear at the specified place and time in pursuance of a proclamation issued under Section 82 Cr.P.C. However, the procedure for taking cognizance of offences falling within Sections 172 to 188 I.P.C. is specifically governed by Section 195(1)(a) Cr.P.C., which bars the Court from taking cognizance except upon a complaint in writing made by the public servant concerned or by some other public servant to whom he is administratively subordinate.
11. The Hon'ble Supreme Court in **Daulat Ram Vs. State of Punjab (AIR 1962 SC 1206)** has categorically held that where the statute mandates a written complaint by the competent public servant, cognizance taken on the basis of a police report or charge-sheet is wholly without jurisdiction and the entire proceedings stand vitiated ab initio.
12. This Court in **Ramendra Sharma and Others (supra)**, after

considering the provisions of Section 174-A I.P.C. and Section 195 Cr.P.C. as well as the judgment of the Hon'ble Supreme Court in **Daulat Ram (supra)**, has held that an FIR registered by a police officer and the consequent charge-sheet under Section 174-A I.P.C. without there being a written complaint by the competent public servant are legally unsustainable and liable to be quashed.

13. The same principle was reiterated by this Court in **Yogeshwar Sood and Another (supra)**, wherein it was held that registration of an FIR under Section 174-A I.P.C. prima facie amounts to an abuse of the process of law in view of the statutory embargo contained in Section 195 Cr.P.C.
14. In the present case, the record reveals that the FIR dated 02.04.2022 under Section 174-A I.P.C. was registered by the Station House Officer on his own. No written complaint by the competent public servant, as required under Section 195(1)(a) Cr.P.C., has been brought on record. The prosecution was initiated solely on the basis of the police report, followed by submission of the charge-sheet and passing of the cognizance order dated 01.03.2023.
15. Once the mandatory requirement prescribed under Section 195 Cr.P.C. has not been complied with, the learned Chief Judicial Magistrate could not have legally taken cognizance upon the police report. The impugned cognizance order, therefore, suffers from inherent lack of jurisdiction.
16. Apart from the above, the cognizance and summoning order dated 01.03.2023 does not disclose application of judicial mind. The order neither specifies the penal provision nor mentions the names of the accused persons. It is a cryptic and mechanical order which cannot be sustained in law.
17. The inherent jurisdiction of this Court under Section 482 Cr.P.C. is intended to prevent abuse of the process of the Court and to secure the ends of justice. Since the entire prosecution is founded upon proceedings initiated contrary to the mandatory provisions of Section 195 Cr.P.C., allowing the criminal proceedings to continue would amount to abuse of the process of the Court.
18. Consequently, the application succeeds and is allowed.
19. The entire proceedings of Case No.11558 of 2023, (State Vs. Anshu and Others), arising out of Case Crime No.65 of 2022, under Section 174-A I.P.C., Police Station Ganj Dundwara, District Kasganj, including Charge-sheet No.79 of 2022 dated 14.06.2022, the cognizance and summoning order dated 01.03.2023 passed by the Chief Judicial Magistrate, Kasganj, as well as all consequential proceedings, are hereby quashed.

20. The application is, accordingly, allowed.

August 10, 2026
Akbar

(Madan Pal Singh,J.)