



HIGH COURT OF JUDICATURE AT ALLAHABAD
APPLICATION U/S 528 BNSS No. - 28170 of 2025

Reserved

Ram Muni Gautam

.....Applicant

Versus

State of U.P. and another

.....Opposite Party(s)

Counsel for Applicant(s)	: Ashish Kumar Pandey, Kartikey Dubey, Man Mohan Mishra, Shyamdhhar Pandey
Counsel for Opposite Party(s)	: G.A., Mayank Kumar Sahu, Vineet Kumar Sahu

Court No. - 88

HON'BLE SANJIV KUMAR, J.

1. Heard Shri Man Mohan Mishra, along with Shri Kartikey Dubey, learned Counsel for the applicant, Shri Vineet Kumar Sahu, learned Counsel for the opposite party no. 2 and Shri Rakesh Kumar Rao, learned A.G.A for the State and perused the material on record.

2. This application under Section 528 Bharatiya Nagarik Suraksha Sanhita, 2023, (in short B.N.S.S.), has been filed by the applicant to quash the charge-sheet No.1 of 2025 dated 08.03.2025 and cognizance-cum-summoning order dated 31.05.2025, passed by Judicial Magistrate, Atarra, District- Banda, in Criminal Case No.229 of 2025 (State Vs. Ram Muni Gautam) arising out of Crime No.288 of 2024, under Sections 318(4), 352, 351(3) B.N.S., Police Station- Atarra, District Banda, pending in the Court of Judicial Magistrate, Banda.

3. Brief facts of the case are that the FIR was lodged by opposite party no.2 with the allegations that he agreed to purchase the land of the accused for sale consideration of Rs.30 lakhs and half of the said amount was transferred in accused's account from first informant's wife's account. Rest of the sale consideration was to be paid at the time of execution of registered sale deed, but under one pretext or another the accused avoided to execute the sale deed and later on it came to know that upon forged document, he has got transferred the money in his account. Now he is not returning the money and hurling abuses and giving threat to the first informant. Upon this information, FIR was lodged against the applicant under Sections- 318(4), 352 and 351(3) B.N.S. and under Section 66D, I.T. Act and after investigation charge-sheet has been filed under Sections- 318(4), 352 and 351(3) B.N.S. The concerned court took cognizance of the offence and summoned the applicant.

4. It is submitted by learned counsel for the applicant that the FIR has been lodged on false and concocted facts and the applicant has not agreed to execute any sale deed of his land nor had taken money from opposite party no.2. In fact opposite party no.2 bargained to purchase a house of applicant's brother Surendra Kumar Gautam, who is of unsound mind and in this regard, some transaction took place and in this regard sale deed and reverse sale deed were executed and that there nothing is due against the applicant.

5. It is also submitted by learned Counsel for the applicant that before lodging the FIR the opposite party no.2 had filed a Case No.22 of 2023 before Permanent Lok Adalat, Banda with entirely different allegation asking for the return of money. The applicant has filed Criminal Misc. Writ Petition No.22780 of 2024 before this Court for quashing of the FIR, in which the arrest of the applicant has been stayed and the same is pending till today. It is next submitted that opposite party no.2's wife has filed Civil Suit No.92 of 2025 before the Civil court with the prayer to direct the revisionist/ defendant to pay Rs.15 lakhs with interest. It is also submitted that the dispute between the parties is

essential civil in nature and there is no criminal element in it. Therefore, the charge-sheet, summoning order as well as the entire proceeding is liable to be quashed.

6. In this regard, learned Counsel for the applicant has relied upon decision of Hon'ble Supreme Court in Mahmood Ali and Others Vs. State of U.P. and Others, AIR 2023 SC 3709; Rajeev Kumar Vishnoi and Others Vs. State of U.P. and Others, Application U/S 482 No.11763 of 2010 decided on 23.04.2026; S.N. Vijaylakshmi and Others Vs. State of Karnataka and Others, in Criminal Appeal No.3302 of 2025 (arising out of Special Leave Petition (Crl). No.8626 of 2024) decided on 31.07.2025 and also (2013) 11 SCC 673 Paramjeet Batra Vs. State of Uttarakhand and Others.

7. The law laid down in the above said decisions, is that if the High Court observes that the dispute which is essentially of civil in nature and is given a cloak of criminal offence and a civil remedy is available and also adopted then the High Court should not hesitate to quash the criminal proceeding to prevent abuse of process of law. In the absence of element of criminality, if both the civil and criminal cases are allowed to continue, it will definitely amount to abuse of process of court, which the courts have always tried to prevent by putting a stop to any such criminal proceeding.

8. Per contra, learned A.G.A. on behalf of the State and learned Counsel for opposite party no.2 have opposed and stated that the allegations alleged in FIR, *prima facie*, make out a cognizable offence as the applicant has cheated the first informant under the pretext to sale his land and received Rs.15 lakhs which he did not return despite repeated demands. Therefore, this application has no force and is liable to be dismissed.

9. The Hon'ble Supreme Court in the landmark case *State of Haryana v. Ch. Bhajan Lal (1992 Supp. (1) SCC 335)*, has considered in detail, the provisions of section 482 and the powers of the High Court to quash criminal proceedings or FIR. The Supreme Court summarized the

legal position by laying the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

"1. 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.

2. 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.

3. Where the 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.

4. 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.

5. 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.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (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 concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide 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."

10. In this regard in another case the Hon'ble Supreme Court in **(2013) 11 SCC 673, Paramjeet Batra Vs. State of Uttarakhand** and Others has held as below:-

“12. While exercising its jurisdiction under Section 482 Cr.P.C. of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court

13. As we have already noted, here the dispute is essentially about the profit of the hotel business and its ownership. The pending civil suit will take care of all those issues. The allegation that forged and fabricated documents are used by the appellant can also be dealt with in the said suit. Respondent 2's attempt to file similar complaint against the appellant having failed, he has filed the present complaint. The appellant has been acquitted in another case filed by Respondent 2 against him alleging offence under Section 406 IPC. Possession of the shop in question has also been handed over by the appellant to Respondent 2. In such a situation, in our opinion, continuation of the pending criminal proceedings would be abuse of the process of law. The High Court was wrong in holding otherwise.”

11. In the backdrop of the above legal position and the inherent powers of the Court under Section 528 BNSS, this Court, while exercising power under Section 528 BNSS, can also see the unrefuted material of the applicant to judge whether criminal proceeding instituted by opposite party no.2 is manifestly attended with mala fide and/or 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.

12. In view of the submissions of learned counsel for the parties and upon perusal of record, legal position as well as the material on record, it is clear that the applicant has been summoned under Sections- 318(4), 352 and 351(3) B.N.S. The main allegation against the applicant is that she agreed to sell his land to the first informant and also took part sale consideration but later refused to execute the sale deed and also concealed the fact that the civil litigation is pending with regard to the disputed land.

13. Here, on perusal the record, *prima facie*, shows that the dispute between the parties is essentially of civil in nature, as prior to lodging of the FIR the first informant herself filed case before Permanent Lok Adalat demanding returning of money entire on different facts that the above money was given to the accused on loan upon his demand for raising his house. It is also material to note that the first informant's wife has filed a civil suit against the applicant/accused for the recovery of money, which is pending. Therefore, at the most this is a case of breach of promise, where it is also relevant that notice was issued to applicant raising demand for return of money with interest. It appears that some agreement with regard to applicant's brother Surendra Kumar Gautam's house and in this regard, some transaction took place between the parties and sale deed and reverse sale deed were got executed, but it shows that the dispute between the parties was of civil in nature, which does not contain any criminal intent in it. The civil suit with regard to recovery of money is pending before the Court, therefore, criminal proceeding with regard to same, would amount to an abuse of process of law.

14. Therefore, it is apparent that the above criminal proceeding was instituted by opposite party no.2 mala fide and maliciously with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. It ex-facie demonstrates that continuation of this criminal proceeding would be unjust and oppressive.

15. In view of the above, the present application, under Section 528 BNSS, is **allowed** and the charge-sheet No.1 of 2025 dated 08.03.2025 and cognizance-cum-summoning order dated 31.05.2025, in Criminal Case No.229 of 2025 (State Vs. Ram Muni Gautam) arising out of Case Crime No.288 of 2024, under Sections 318(4), 352, 351(3) B.N.S., Police Station- Atarra, District Banda are, hereby, **quashed**.

(Sanjiv Kumar,J.)

August 06, 2026
AdityaG