



2026:AHC:54925

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**APPLICATION U/S 528 BNSS No. - 8124 of 2026**

Radheshyam

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

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| Counsel for Applicant(s)      | : | Amit Kumar Srivastava |
| Counsel for Opposite Party(s) | : | G.A.                  |

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**Court No. - 81**

**HON'BLE VIVEK KUMAR SINGH, J.**

1. Heard Sri Amit Kumar Srivastava, learned counsel for the applicant and Sri Manish Goyal (Senior Counsel), learned Additional Advocate General assisted by Sri Arvind Kumar, learned A.G.A. for the State.

2. The present application under Section 528 of B.N.S.S. has been filed to quash the impugned charge-sheet dated 13.12.2025 along cognizance / summoning order dated 24.12.2025 passed by Additional District and Sessions Judge, Court No. 5 / Special Judge (Gangster Act), Bareilly in Special Case No. 1 of 2026 (State vs. Rajeev Ran and others) arising out of Case Crime No. 876 of 2024, under Section 2/3(1) of U.P. Gangster and Anti Social Activities (Prevention) Act, 1986, Police Station Izzatnagar, District Bareilly.

3. The learned counsel for the applicant has assailed the validity and legality of the impugned order dated 24.12.2025 passed by learned Trial Court, whereby cognizance of offence was taken by the learned Trial Court.

4. It is submitted by the learned counsel for the applicant that the F.I.R. was lodged in the present case under Section 2/3 (1) of the Act, 1986, as Case Crime No. 876 of 2024 at P.S. Izzatnagar, District Bareilly. The gang chart was also prepared in the same sections. The Investigating Officer, after due investigation, submitted chargesheet in this case on 13.12.2025 against the applicant under Section 2/3(1) of the Act, 1986. The learned Court concerned while taking cognizance on 24.12.2025, did not go through the contents of the F.I.R. as well as chargesheet and in a

very cryptic manner, he took cognizance under Section 3(1) of the Act, 1986. The learned Court concerned has not explained as to why the cognizance was not taken by him under Section 2 of the Act, 1986.

5. It is further submitted by the learned counsel for the applicant that the learned Court concerned did not apply his judicial mind at the time of taking the cognizance and he took cognizance mechanically. It is settled law that at the time of taking cognizance no alteration can be made by the learned Court concerned. He is duty bound to take cognizance under those sections wherein the charge sheet was submitted by the Investigating Officer. It is also submitted that any alteration can be made by the learned Court concerned at the time of framing of charge.

6. The learned counsel for the applicant has relied upon the judgment of a Division Bench of this Court in the case of **Asim @ Hassim vs. State of U.P. and Another, in Criminal Misc. Writ Petition No. 18729 of 2023**, decided on 02.12.2023.

7. Per contra, learned A.G.A. has opposed the prayer made by the learned counsel for the applicant, but he could not dispute the factual aspect of the case.

8. I have heard both the sides and perused the record.

9. On perusal of impugned order dated 24.12.2025 passed by the learned Court concerned, it is manifest that the learned Court concerned took cognizance in the present case under Section 3(1) of the Act, 1986 though the Investigating Officer has submitted chargesheet against the applicant under Section 2/3(1) of the Act, 1986. The F.I.R. was also lodged under Section 2/3 (1) of the Act, 1986.

10. The Division Bench of this Court in the case of **Asim @ Hassim (supra)** held that it is expected to mention the corresponding provision mentioning the anti-social activities in which the accused is involved and on the basis of which he was named as gangster. A person cannot be punished without specifying the offence committed by him which would justify his classification as a gangster. The relevant paragraphs of **Asim @ Hassim (supra)**, are reproduced as hereunder:

"5. From the provisions, quoted as above as well as from the perusal of other provisions of Gangsters Act, it is clear that a person can be prosecuted under Section 3 of Gangsters Act only after he falls under the definition of "gangster" being part of the gang which is involved in anti social activities as mentioned in Section 2(b)(i) to (xxv) of the Act. The purpose of making special provisions of Gangsters Act for dealing with gangsters and for preventing their anti social activities. The provision of this Act are stringent and are therefore required to be interpreted strictly so as to prevent their misuse on the part of State authorities.

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9. In the present case, the impugned F.I.R. was registered u/s 3(1) Gangsters Act, without mentioning the corresponding provision, mentioning the anti social activities in which the accused is involved and on the basis of which he was named as gangster. A person cannot be punished without specifying the offence committed by him which would justify his classification as a Gangster.

10. Considering the aforesaid facts and circumstances, this Court is of the view that the impugned F.I.R. is illegal being contrary to the provision of Gangsters Act by failing to mention the relevant section of the Act. Therefore, the impugned F.I.R. is hereby quashed"

11. The Hon'ble Supreme Court in **State of Gujarat v. Girish Radhakrishnan Varde, (2014) 3 SCC 659**, has observed in paragraphs 13 and 14 of the judgment that the Judicial Magistrate or court cannot add or subtract, exclude or include any Section mentioned in the charge-sheet at the time of taking of cognizance as the same is permissible at the time of framing of charge. The relevant paragraphs are delineated below:

"13. But if a case is registered by the police based on the FIR registered at the Police Station under Section 154 Cr.P.C. and not by way of a complaint under Section 190(a) of the Cr.P.C. before the magistrate, obviously the magisterial enquiry cannot be held in regard to the FIR which had been registered as it is the investigating agency of the police which alone is legally entitled to conduct the investigation and, thereafter, submit the chargesheet unless of course a complaint before the magistrate is also lodged where the procedure prescribed for complaint cases would be applicable. In a police case, however after submission of the chargesheet, the matter goes to the magistrate for forming an opinion as to whether it is a fit case for taking cognizance

and committing the matter for trial in a case which is lodged before the police by way of FIR and the magistrate cannot exclude or include any section into the chargesheet after investigation has been completed and chargesheet has been submitted by the police.

14. The question, therefore, emerges as to whether the complainant/informant/prosecution would be precluded from seeking a remedy if the investigating authorities have failed in their duty by not including all the sections of IPC on which offence can be held to have been made out in spite of the facts disclosed in the FIR. The answer obviously has to be in the negative as the prosecution cannot be allowed to suffer prejudice by ignoring exclusion of the sections which constitute the offence if the investigating authorities for any reason whatsoever have failed to include all the offence into the chargesheet based on the FIR on which investigation had been conducted. But then a further question arises as to whether this lacunae can be allowed to be filled in by the magistrate before whom the matter comes up for taking cognizance after submission of the chargesheet and as already stated, the magistrate in a case which is based on a police report cannot add or subtract sections at the time of taking cognizance as the same would be permissible by the trial court only at the time of framing of charge under section 216, 218 or under section 228 of the Cr.P.C. as the case may be which means that after submission of the chargesheet it will be open for the prosecution to contend before the appropriate trial court at the stage of framing of charge to establish that on the given state of facts the appropriate sections which according to the prosecution should be framed can be allowed to be framed. Simultaneously, the accused also has the liberty at this stage to submit whether the charge under a particular provision should be framed or not and this is the appropriate forum in a case based on police report to determine whether the charge can be framed and a particular section can be added or removed depending upon the material collected during investigation as also the facts disclosed in the FIR and the chargesheet.

(Emphasis supplied)"

12. In view of above facts and circumstances of the case, the impugned order dated 24.12.2025 is hereby set-aside. The matter is remitted back to the learned Court concerned for passing a fresh and reasoned order in this case after going through the contents of the chargesheet dated 13.12.2025.

13. Accordingly, the present Application U/S 528 of B.N.S.S. is partly allowed.

**(Vivek Kumar Singh,J.)**

**March 18, 2026**  
Lalit Shukla