



2026:AHC:53527

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 7366 of 2026

Sanjay Sharma

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Shekhar Gangal
Counsel for Opposite Party(s)	:	G.A.

Court No. - 81

HON'BLE VIVEK KUMAR SINGH, J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State respondents.
2. Present application under Section 528 B.N.S.S. has been preferred for quashing the charge-sheet dated 30.6.2024 being charge-sheet no. 282 of 2024 arising out of Case Crime No. 246 of 2024, under Section 171-F, 188 I.P.C. and Section 126A of Representation of People Act, Police Station Khair, District Aligarh as well as the entire proceeding of Case No. 1530 of 2025 (State of U.P. vs. Sanjay Sharma) and summoning / cognizance order dated 4.11.2025 issued by Judicial Magistrate Khair, Aligarh.
3. It is submitted by the learned counsel for the applicants that the FIR has been lodged on false ground while the applicant have not committed any offence. The police has also submitted chargesheet on the basis of insufficient evidence against the applicant. The essential ingredients to constitute the offence are missing in the FIR as well as in the statement of witnesses. The present prosecution has been lodged with a mala fide intention. It is also submitted that cognizance, taken in the matter on the basis of chargesheet is illegal and without application of judicial mind. It is also submitted that offences alleged against the applicant are non-cognizable offences and the police without taking prior permission of the court concerned, investigated the matter and submitted chargesheet in this case and the learned Magistrate has also wrongly and illegally took

cognizance of offence vide order dated 4.11.2025 and proceeded further on the police report. It is also submitted that no cognizance can be taken under Section 188 IPC in view of Section 195 Cr.P.C. except upon a complaint in writing of the public servant concerned. Thus taking cognizance under Section 188 IPC is also without jurisdiction. It is also submitted that offences under section 171-F IPC is a non-cognizable offence as per Schedule (I) of the Cr.P.C. and offence under section 126(A) of the Representation of People Act is also a non-cognizable offence wherein maximum punishment is upto two years imprisonment or with fine.

4. It is further submitted that there is no material available on record that would indicate that permission of the Magistrate was obtained prior to investigation in non-cognizable offences. The learned counsel for the applicant referred to the schedule appended with Cr.P.C. and also punishment provided for the offences alleged against the applicant. It is contended in last that the proceedings against the applicant can only be made on the basis of complaint under Chapter XV Cr.P.C.

5. On the other hand, learned AGA opposed the prayer and submitted that though the offences alleged against the applicants are non-cognizable, yet there is no infirmity or illegality in the impugned order warranting interference by this Court.

6. I have considered the submissions made by the learned counsel for the parties and have gone through the entire record carefully.

7. As is evident in this matter that the FIR was lodged on 16.5.2024, under Section 171-F, 188 IPC and Section 126(A) of the Representation of People Act, 1950. The matter was investigated by the Investigating Officer and submitted chargesheet under the aforesaid sections on 30.6.2024. The learned Magistrate took cognizance of offence on 4.11.2025, under the aforesaid sections.

8. As per Schedule, Section 171-F of the IPC is non-cognizable, bailable and punishable for one year imprisonment. As per section 188 of the IPC the offence is cognizable, bailable and punishable upto simple imprisonment for one month or fine of rupees two hundred or both and as

per Section 126(A) of the Representation of People Act, the offence is non-cognizable and punishable upto imprisonment of two years or with fine, therefore, in the aforesaid Sections, maximum punishment is upto to two years imprisonment.

9. Secondly, perusal of records shows that the Magistrate concerned without considering the nature of offence for which chargesheet was submitted, took cognizance on 4.11.2025. Since offences under section 171(F) IPC and 126(A) of the Representation of People Act are non-cognizable offences, cognizance would not have been taken on the chargesheet for the aforesaid offences as per provisions of Section 2(d) Cr.P.C. / 2(h) B.N.S.S. and Chapter XV Cr.P.C. / Chapter XVI B.N.S.S., if the cognizance was taken within time in view of Section 468 Cr.P.C. In the circumstances, this Court is of the opinion that cognizance taken vide order dated 4.11.2025, on the chargesheet submitted for the offence under Section 171-F IPC and Section 126-A of the Representation of People Act is liable to be set aside.

10. So far as the Section 188 IPC is concerned, it is specially provided under Section 195(1) of the Cr.P.C. that no court shall take cognizance of any offence under section 172 to 188 except upon a complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. Thus, taking cognizance under Section 188 IPC on a police report is also without jurisdiction.

11. For sake of convenience, Section 195 Cr.P.C. reads as under:-

"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.-(1) No Court shall take cognizance --

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

1 [except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.]

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appellable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

12. Therefore, in respect of offence punishable under Section 188 of I.P.C., the Court can take cognizance only on a complaint in writing of the public servant concerned or some other public servant concerned. In this case, the F.I.R. was registered on a police report, on which the chargesheet has been submitted and it was to be treated as a complaint. The learned Magistrate proceeded further and wrongly, illegally took cognizance of the offence. In view thereof taking cognizance for offence under Section 188 of I.P.C. by the learned Magistrate is hit by Section 195 of Cr.P.C. and, therefore, the order taking cognizance for offence under Section 188 of I.P.C. against the applicant on a police report is unsustainable and the same is liable to be set aside.

13. As per Section 2(d) of the Cr.P.C., the opposite party no.2 could have prosecuted the applicants only on the basis of complaint case.

14. In this matter, not only the FIR was registered but also the investigation was carried out and the chargesheet was submitted without any jurisdiction. Thus, taking cognizance under Section 188 IPC on the basis of police report is also illegal. Even more, accepting the chargesheet by the Magistrate and taking cognizance of the offence does not validate the proceedings. Even subsequent permission by the Magistrate also cannot cure the illegality. As could be seen from Section 460 of Cr.P.C. / 506 B.N.S.S., these defects of non taking permission before the Investigation in a non-cognizable offence is also not curable. Though the chargesheet was filed after due investigation without prior permission of the court and that the Magistrate has accepted the chargesheet and took cognizance, it does not mean to show that permission was granted by the

Magistrate to investigate such non-cognizable offence or the error committed by the Investigating Officer has been cured. Therefore, the investigation into the non-cognizable offence without written order of the Magistrate is strictly contrary to the provisions of this Section.

15. In view of the above facts and circumstances of the case, the investigation done by the police in this case is without jurisdiction and based on such invalid investigation report. The entire proceedings before the learned Magistrate is vitiated by serious incurable defects.

16. Hence the present application is allowed.

17. The charge-sheet dated 30.6.2024 being charge-sheet no. 282 of 2024 arising out of Case Crime No. 246 of 2024, under Section 171-F, 188 I.P.C. and Section 126A of Representation of People Act, Police Station Khair, District Aligarh as well as the entire proceeding of Case No. 1530 of 2025 (State of U.P. vs. Sanjay Sharma) and summoning / cognizance order dated 4.11.2025 issued by Judicial Magistrate Khair, Aligarh in the above-mentioned proceedings are hereby quashed in respect of the applicant only.

18. No order as to cost.

(Vivek Kumar Singh,J.)

March 17, 2026

Lalit Shukla