



2026:AHC:55457

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 5507 of 2026

Kailash Chandra And Another

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Anupam Shyam Dwivedi, Smt. Richa
Dixita, Sr. Advocate, Utkarsh Dixit
Counsel for Opposite Party(s) : G.A.

Court No. - 75

HON'BLE SAURABH SRIVASTAVA, J.

1. Heard Sri Sudhir Dixit, learned Senior Counsel assisted by Sri Anupam Shyam Dwivedi, learned counsel for applicants and learned AGA for the State.
2. On previous occasion notices were issued to opposite party no.2 and the same has been reported as served, when the matter has been taken up today none appeared on behalf of opposite party no.2 either in person or through counsel. No option left but to consider the prayer as made through instant application on the basis of documents available in the records as well as arguments raised by learned counsel for the applicant, although it is moral and legal obligation upon the opposite party no.2 to put her appearance after service of notice before any forum of law for protecting and defending the case when the same has been challenged.
3. The present application has been preferred challenging charge-sheet dated 07.06.2025 and cognizance/summoning order dated 15.11.2025 along with entire proceedings of Criminal Case No.1141 of 2025 (State Vs. Kailash Chandra and others) arising out of Case Crime No.3 of 2025, under Sections 191(2), 316(2), 318(4), 338, 336(3), 340(2), 61(2) BNS, P.S. Sasni (Sasni Kotwali), District- Hathras, pending before learned court of Additional Chief Judicial Magistrate, Hathras.
4. Learned Senior Counsel appearing on behalf of the applicants argued that applicants have been falsely implicated in the present case by opposite party no.2 only to harass them since no offence as alleged, has ever been

committed by them. It has also been argued by learned Senior Counsel for applicants that applicants are only the marginal witness of the sale deeds in question. Learned Senior Counsel for applicants has further submitted that applicants were also not the beneficiary of the said sale deeds in any manner whatsoever. Learned Senior Counsel for applicants further contended that as per allegations leveled, all are against co-accused Udal, who has been executed the alleged sale deeds and case of the applicants is on better footing from that co-accused, who are only marginal witnesses in the alleged sale deeds, who have been earlier granted interim protection by co-ordinate Bench of this Court while preferring anticipatory bail. Learned Senior Counsel for applicants further submitted that there is hardly any evidence against applicants to corroborate them with the alleged incident. It has also been argued by learned Senior Counsel for applicants that without conducting fair investigation, the concerned Investigating Officer submitted chargesheet against applicants whereupon without applying its judicial mind, learned court concerned took cognizance of offence over the said chargesheet which is abuse of process of law and as such, same may be quashed.

5. Per contra, learned AGA vehemently opposed the prayer as made in the application by way of submitting that after conducting fair investigation, chargesheet has been submitted against applicants whereupon cognizance was taken and as such, no interference is required but at the same time, learned AGA did not dispute the fact that applicants are only the marginal witnesses of the sale deeds.

6. After hearing the rival submissions extended by learned counsels for the parties and perusing the records as well as alleged sale deeds, it is crystal clear that applicants are the only marginal/attesting witnesses of the same and more so, they are also not beneficiary of the said sale deeds. The issue whether any attesting witness to a will deed or sale deed can be dragged into a criminal litigation notwithstanding the fact that the same person is not the beneficiary of the said will deed or sale deed, has already been adjudicated by Hon'ble the Apex Court in the case of **M. Srikanth Vs. State of Telangana and another [2019 (1) SCC 373]** wherein it has been held that an attesting witness cannot be hauled into the web of crime.

7. In view of the aforesaid facts and circumstances as well as in light of the judgement rendered by Hon'ble the Apex Court in the case of **M. Srikanth**

(supra), charge-sheet dated 07.06.2025 and cognizance/summoning order dated 15.11.2025 along with entire proceedings of Criminal Case No.1141 of 2025 (State Vs. Kailash Chandra and others) arising out of Case Crime No.3 of 2025, under Sections 191(2), 316(2), 318(4), 338, 336(3), 340(2), 61(2) BNS, P.S. Sasni (Sasni Kotwali), District- Hathras, pending before learned court of Additional Chief Judicial Magistrate, Hathras, are hereby set aside qua applicants herein.

8. Accordingly, the instant applicant is **allowed**.

March 18, 2026
Saif

(Saurabh Srivastava,J.)