



2026:AHC:66907

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 6899 of 2026

Surajpal And 2 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Akhilesh Chandra Dwivedi, Sachchida
Nand Tiwari
Counsel for Opposite Party(s) : Arjun Singhal, G.A.

Reserved on 19.03.2026

Delivered on 31.03.2026

Court No. - 77

HON'BLE SAURABH SRIVASTAVA, J.

1. Heard learned counsel for parties.

2. Present application has been preferred with prayer to quash entire proceeding of Case Crime no. 38 of 2025 under Section 379 IPC, PS-Bhojpur, District Ghaziabad along with cognizance order dated 19.4.2025 passed by learned Civil Judge (J.D.) Fast Track Court/Judicial Magistrate, Ghaziabad.

3. Brief facts of the case are that present FIR has been lodged on dated 12.2.2025 at the behest of opposite party no. 2 against the applicants alleging there in that opposite party no. 2 have sown sugarcane crop over his plot bearing no. 90 situated at village Jahangirpur, Tehsil Modinagar, District Ghaziabad, on dated 22.10.2022, applicants harvested and took away the crop with them and as such offence of theft is made out against the applicants. After conducting investigation, charge sheet has been submitted against the applicants whereupon cognizance of offence has been taken up vide impugned order dated 19.4.2025.

4. It is contended by learned counsel for applicants that earlier name of ancestor of applicants was entered in the revenue record against the plot in question but all of a sudden in 1370F-1372F, name of one Munshilal along with 39 others have been recorded in the said record without any reason. Opposite party no. 2 is descendant of aforesaid Munshilal. In the

second round of consolidation operation which was started on 7.4.2001, applicants and his ancestors came to know about the fraudulent entry in the revenue records and they filed objection before Consolidation Officer, Modinagar, Ghaziabad which was rejected. Thereafter several round of litigation was adopted by applicants including up to the level of appellate and revisional authority but objection of applicants was rejected at all the stages. Being aggrieved with the order of Consolidation Officer, appellate authority as well as revisional authority, applicants preferred Writ B no. 491 of 2020 before this Court wherein interim relief was granted vide order dated 19.4.2023 passed by co-ordinate Bench of this Court directing the parties to maintain status quo as on date. During the pendency of aforesaid writ petition, opposite party no. 2 colluded with the police and got filed a report dated 30.1.2020 under Section 145 Cr.P.C. by Station House Officer, Bhojpur, Ghaziabad before Sub-Divisional Magistrate, Modinagar, Ghaziabad alleging therein that there are chances of breach of peace for harvesting the sugarcane crops standing over plot in dispute. On dated 11.02.2020, concerned Magistrate without assigning any reason directed for attachment of property in shape of plot in question. Being aggrieved with attachment of property, applicants preferred a Criminal Revision bearing no. 92 of 2021 wherein, learned Additional Sessions Judge, Court no. 3, Ghaziabad vide order dated 26.3.2022, quashed the order dated 11.02.2020 and remanded the matter to subordinate court for fresh consideration. The order dated 26.3.2022 was not challenged by any of the parties before any forum of law. As soon as attachment order dated 11.02.2020 was quashed, possession of the applicants over plot in question was automatically restored and they are still in possession.

5. It is further submitted that between order dated 26.3.2022 and interim order dated 19.4.2023 passed in aforesaid Writ B no. 491 of 2020, possession of the applicants was not disturbed. After interim order passed by this Court, learned subordinate court had nothing to adjudicate in regard to possession of the parties but learned trial court proceeded and passed the order dated 26.12.2024 arbitrarily accepting possession of opposite party no. 2 on the basis of entries of their names in certain revenue records. Once this Court has taken cognizance and passed the order of maintaining status quo, then the proceeding under Section 145

Cr.P.C. would be futile exercise and learned subordinate court was required to drop the proceedings of Section 145 Cr.P.C. However, aggrieved with order dated 26.12.2024, applicants have filed criminal revision defective no. 1702 of 2025 before this Court which is still pending to be adjudicated. The instant criminal proceeding in shape of FIR has come into inception after above order dated 26.12.2024. The FIR has been lodged after delay of more than 2 years, 3 months and 22 days which is not sustainable in the eye of law. The dispute regarding possession over plot in question is still pending adjudication before concerned court, therefore initiation of entire prosecution against the applicants in shape of FIR bearing Case Crime no. 38 of 2025 is gross abuse of process of law and as such entire proceeding is liable to be quashed and set aside.

6. Per contra, Sri Arjun Singhal, learned counsel for opposite party no. 2 vehemently opposed the prayer sought through instant application and submitted that entire arguments raised at the behest of applicants are subject matter of trial. The possession of opposite party no. 2 over plot in question was established in proceeding under Section 145 Cr.P.C. vide order dated 26.12.2024 and as such *prima facie* offence of theft is made out against the applicants and as such no interference is required by this Court.

7. Learned AGA also seconded the arguments so raised by learned counsel for opposite party no. 2.

8. After hearing rival submissions extended by learned counsel for the parties and going through the records in shape of the proceedings took place between the parties in respect of Section 145 Cr.P.C. in two rounds and thereafter the FIR which has been instituted at the behest of opposite party no. 2 in the year 2025 in respect of the incidence which took place in the year 2022, it is apparent from the records that the incidence which has been brought to the notice of the concerned police authorities by way of registering Case Crime no. 38 of 2025 first time in the year 2025 itself whereas the incidence occurred in the year 2022 when the matter was subjudice in respect of possession between the parties and the same matter is still pending to be adjudicated finally before this Court wherein

the interim protection has already been extended in favour of the applicant in shape of "status quo" vide order dated 19.4.2023 and as such the prime issue in respect of the possession is still subject matter of the final adjudication of Writ B no. 491 of 2020 (Virendra Singh and 47 others vs. Deputy Director of Consolidation and 86 others) which is pending before this Court wherein opposite party no. 2 is one of the respondents. Once the sole matter of dispute persisting between the parties in respect of the portion of land which has been proceeded by concerned Sub-Divisional Magistrate under Section 145 Cr.P.C. and implication of the applicants was mentioned during time when the possession has been taken from the applicants but at the time of conducting inquiry by concerned Investigating Officer this fact has never been brought to the notice of concerned court which culminated into order dated 19.4.2025 through which cognizance of offence has been taken up and the applicants have been summoned in respect of the charge-sheet dated 7.4.2025.

9. In view of aforementioned facts and circumstances, implication of the applicants with specific allegations attracting Section 379 of IPC is not made out, since the applicants are claiming their possession over the property in dispute from where the crop of sugarcane has been harvested and alleged to be stolen and the same matter is pending to be finally adjudicate in Writ B no. 491 of 2020 (Virendra Singh and 47 others vs. Deputy Director of Consolidation and 86 others) and as such entire proceeding of Case no. 7665 of 2025 pending before court of learned Civil Judge (Junior Division) Fast Tract Court/ Judicial Magistrate, Ghaziabad arising out of Case Crime no. 38 of 2025 which includes charge sheet dated 7.4.2025 and summoning order dated 19.04.2025 are hereby **set aside only in respect of applicants herein.**

10. The instant application u/s 528 BNSS stands **allowed** accordingly.

(Saurabh Srivastava,J.)

March 31, 2026
Shaswat